



## FINANCE COMMISSION OF TEXAS

**MEETING DATES**.....June 20, 2014

**MEETING LOCATION** .....State Finance Commission Bldg  
William F. Aldridge Hearing Room  
2601 North Lamar Boulevard  
Austin, Texas 78705

**CONTACT INFORMATION**.....Phone: (512) 936-6222  
Email: [Finance.Commission@fc.texas.gov](mailto:Finance.Commission@fc.texas.gov)  
Website: [www.fc.texas.gov](http://www.fc.texas.gov)

**FUTURE MEETING DATES** .....August 15, 2014  
October 17, 2014  
December 12, 2014

*\*\* The State of Texas fiscal year begins September 1 and ends August 31. The dates noted meet the minimum statutory requirement of six meetings per calendar year. Fin. Code §11.106*

*Meeting Accessibility. Under the Americans with Disabilities Act, the agency will accommodate special needs. Those requesting auxiliary aids or services should notify the Texas Finance Commission Administrator several days prior to the meeting using the contact information above by mail, telephone, or email.*



## CURRENT 2015 FINANCE COMMISSION MEETING DATES

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August 15, 2014

October 17, 2014

December 12, 2014

## PROPOSED 2015 FINANCE COMMISSION MEETING DATES

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February 20, 2015

April 17, 2015

June 19, 2015

August 14, 2015

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# **AGENDA**

## **Finance Commission of Texas**

### **STRATEGIC PLANNING COMMITTEE MEETING**

Friday, June 20, 2014

8:30 a.m.

Finance Commission Building

William F. Aldridge Hearing Room, 2601 N. Lamar Blvd.

Austin, Texas 78705

Public comment on any agenda item or issue under the jurisdiction of the Finance Commission agencies is allowed unless the comment is in reference to a rule proposal for which the public comment period has ended. However, upon majority vote of the Commission, public comment may be allowed related to final rule adoption.

- A. Discussion of and Possible Vote to Recommend that the Finance Commission Approve the 2015-2019 Strategic Plans of the Texas Department of Banking, Office of Consumer Credit Commissioner and the Texas Department of Savings and Mortgage Lending.
- B. Discussion of the 2015-2019 Strategic Plan of the Texas Finance Commission.

**NOTE:** The Strategic Planning Committee may go into executive session (close its meeting to the public) on any agenda item if appropriate and authorized by the Open Meetings Act, Texas Government Code, Chapter 551.

**Meeting Accessibility:** Under the Americans with Disabilities Act, the Finance Commission will accommodate special needs. Those requesting auxiliary aids or services should notify Cathey Richards, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-1325, as far in advance of the meeting as possible.

**A.**

**Finance Commission**

**Committee Material**

**And**

**Other Finance Commission Matters**

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# AGENDA

## FINANCE COMMISSION MEETING

Friday, June 20, 2014

9:00 a.m. or Upon Adjournment of the  
Strategic Planning Committee Meeting, Whichever is Later

Finance Commission Building  
William F. Aldridge Hearing Room, 2601 N. Lamar Blvd.  
Austin, Texas 78705

*Section A.3 will take up the following agenda items with NO DISCUSSION as notated in bold and italicized A1; A6; B2; D2.*

Public comment on any agenda item or issue under the jurisdiction of the Finance Commission agencies is allowed unless the comment is in reference to a rule proposal for which the public comment period has ended. However, upon majority vote of the Commission, public comment may be allowed related to final rule adoption.

### A. FINANCE COMMISSION MATTERS

1. *Review and Approval of the Minutes of the April 11, 2014, and April 17, 2014, Finance Commission Meetings.*
2. General Public Comment
3. Consent Agenda.
4. Finance Commission Operations – Legislative
5. Strategic Planning Committee Report
  - A. Discussion of and Possible Vote Taking Action on the Finance Commission Agencies' 2015 – 2019 Strategic Plans.
  - B. Discussion of the 2015-2019 Strategic Plan of the Texas Finance Commission.
6. **Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 8, Joint Financial Regulatory Agencies, §153.1, §153.5, §153.15, and §153.51, Concerning Home Equity Lending.**
7. Discussion of and Possible Action Regarding Personnel Matters Pursuant to Section 551.074, Texas Government Code: Deliberations with Respect to the Duties of a Person Holding the Position of Executive Director of the Finance Commission, Deliberations with Respect to the Duties of Persons Holding the Position of Agency Commissioner Positions, and Other Staff.
8. Discussion of and Possible Action Regarding Facility Planning and Real Property Matters Pursuant to Section 551.072, Texas Government Code: Deliberations Regarding the Purchase, Exchange, Lease or Value of Real Property.

9. Discussion of and Possible Action Regarding Anticipated and Pending Litigation Pursuant to Section 551.071, Texas Government Code, for the purpose of seeking the advice or attorney-client privileged communications from our attorneys regarding pending and contemplated litigation.

## **B. DEPARTMENT OF BANKING**

1. Industry Status and Departmental Operations: a) Items of Interest from the Commissioner's Office; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) Special Audits Division Activities; e) Fiscal Division Activities; f) Strategic Support Division Activities; g) Legal Division Activities; h) Legislative Activity; and i) General Items of Interest.
2. *Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §25.1, Concerning Prepaid Funeral Contract Forms – Definitions.*
3. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §15.4, Concerning Corporate Activities-Required Information and Abandoned Filings; 7 TAC §21.4, Concerning Trust Company Corporate Activities-Required Information and Abandoned Filings; and 7 TAC §33.13, Concerning How to Obtain a New Money Services Business License.
4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §33.27, Concerning Fees to Get and Maintain a Money Services Business License.
5. Discussion of and Possible Action Regarding Anticipated and Pending Litigation.

*Texas Department of Banking v. Greg Abbott, Attorney General of Texas*; Cause No. D-1-GV-11-001906, In the 53rd District Court of Travis County, Texas.

*State of Texas v. Myrtlewood Memorial Services d/b/a Harlingen-Combes Memorial Cemetery*, Cause No. 2013-DCL-2248-B, in the 138<sup>th</sup> Judicial District Court of Cameron County, Texas.

*State of Texas v. House Savings Investment, LLC, et al*, Cause No. D-1-GV-13-000763, in the 353<sup>rd</sup> District Court of Travis County, Texas.

## **C. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING**

1. Industry Status and Departmental Operations – State Savings Bank Activity: a) Industry Status; b) State Savings Bank Charter and Application Activity; c) Wholesale Savings & Loan Charter and Application Activity; d) Recap of Problem Institutions/Enforcement Issues; and e) Other Issues.
2. Industry Status and Departmental Operations – Mortgage Lending Activity: a) Residential Mortgage Loan Originators; b) Mortgage Examination; c) Consumer Complaints/Legal Activity; d) Mortgage Industry Advisory Committee Minutes; and e) Other Issues.
3. Fiscal/Operations Activity: a) Funding Status/Audits/Financial Reporting; b) Staffing; and c) Other Issues.

4. Discussion of and Possible Action Regarding Anticipated and Pending Litigation.

*Khosrow Khani v. Texas SML*; Cause No. D-1-GN-13-000207, 200<sup>th</sup> Judicial District Court of Travis County, Texas.

**D. OFFICE OF CONSUMER CREDIT COMMISSIONER**

1. Industry Status and Departmental Operations: a) Consumer Protection; b) Consumer Assistance; c) Licensing; d) Credit Education; e) Financial and Administration; f) Legal Activity; and g) Legislative Activity.
2. *Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Chapter 83, Subchapter A, Concerning Rules for Regulated Lenders, Resulting from Rule Review.*
3. Discussion of and Possible Action Regarding Anticipated and Pending Litigation.

*Lynn Rowell d/b/a Beaumont Greenery, MPC Data and Communications, Inc., Micah Cooksey, NXT Properties, Inc., Mark Harken, Montgomery Chandler, Inc., Paula Cook, Townsley Designs, LLC, and Shonda Townsley v. Greg Abbott, in his official capacity as Attorney General of the State of Texas and Leslie L. Pettijohn, in her official capacity as Commissioner of the Office of Consumer Credit Commissioner of the State of Texas; Cause No. 1:14-cv-00190-LY, in the United States District Court, Western District of Texas, Austin Division.*

**Note:** The Finance Commission Committee may go into executive session (close its meeting to the public) on any agenda item if appropriate and authorized by the Open Meetings Act, TEXAS GOVERNMENT CODE, Chapter 551.

**Meeting Accessibility:** Under the Americans with Disabilities Act, the Finance Commission of Texas will accommodate special needs. Those requesting auxiliary aids or services should notify Cathey Richards, Finance Commission of Texas, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 936-6222, as far in advance of the meeting as possible.

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**MINUTES OF THE  
FINANCE COMMISSION MEETING  
FRIDAY, APRIL 11, 2014**

The Finance Commission of Texas met Friday, April 11, 2014, in the Finance Commission Building, William F. Aldridge Hearing Room, 2601 North Lamar Boulevard, Austin, Texas.

**Finance Commission Members in attendance:**

Bill White, Chairman  
Paul Plunket, Vice Chairman  
Susan Burton  
Stacy London  
Will Lucas  
Lori McCool  
Larry Patton  
Jay Shands

**Others in attendance:**

Doug Foster, Executive Director, Finance Commission and  
Commissioner, Texas Department of Savings and Mortgage Lending (SML)  
Charles G. Cooper, Commissioner, Texas Department of Banking (DOB)  
Leslie Pettijohn, Commissioner, Office of Consumer Credit Commissioner (OCCC)  
Karl Hubenthal, Financial Analyst, (OCCC)  
Laurie Hobbs, Assistant General Counsel, (OCCC)  
Stephanie Newberg, Deputy Commissioner (DOB)  
Bob Bacon, Deputy Commissioner (DOB)  
Daniel Wood, Assistant General Counsel (DOB)  
Debby Loomis, Deputy General Counsel (DOB)

Finance Commission Chairman Bill White announced a quorum with eight members present and called the meeting to order at 9:00 a.m.

Chairman White congratulated Finance Commission Members Stacy London, Lori McCool, Larry Patton, and Paul Plunket upon their reappointment by the Governor.

**Discussion of and Possible Vote to Excuse the Absence of a Commission Member.**

Bill White made a motion to excuse Cindy Lyons, Jonathan Newton and Victor Leal from the Finance Commission meeting held on April 11, 2014. Susan Burton seconded and the motion was adopted.

**Finance Commission Matters:**

**General Public Comment.**

Mr. Ronnie Lawson submitted public testimony as a homeowner on the administrative hearings process and his desire to appeal a decision and/or file a complaint with the Finance Commission.

There was discussion with Commissioner Foster addressing the questions.

**Consent Agenda.**

Jay Shands made a motion that the Finance Commission approve consent agenda items A1; B2; and D4. Will Lucas seconded and the motion was adopted. (A copy of the consent agenda is attached).

**Finance Commission Operations. – Legislative Issues; Testimonies and Correspondence; and Agency Complaints.**

Doug Foster as Executive Director to the Finance Commission opened with discussion regarding legislative testimony and the agencies' upcoming quarterly updates to be provided to the Senate Committee on Business and Commerce.

He also notified the Commission that the Interim Charges of the House Investments and Financial Services Committee would be discussed at the upcoming legislative hearing on the on May 21, 2014. One of the interim charges relates to the review of Texas home equity laws.

The Commissioner concluded with a summary of the agencies' upcoming budget process and timeline.

**Audit Committee Report**

Audit Committee Member McCool reported that a quorum was not present at the Audit Committee meeting held on April 11, 2014. Therefore, all voting items would be presented and voted on during the Finance Commission meeting.

**Review and Approval of Minutes of the February 21, 2014, Audit Committee Meeting**

Committee Member McCool made a motion to approve the minutes of the February 21, 2014, Audit Committee meeting. Will Lucas seconded and the minutes were adopted.

**Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' February 28, 2014, Investment Officer Reports.**

Committee Member McCool made a recommendation on behalf of the Audit Committee that the Finance Commission approve the Agencies' February 28, 2014, Investment Officer Reports. Susan Burton seconded and the motion was adopted.

**Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' Second Quarter Financial Statements.**

Committee Member McCool made a recommendation on behalf of the Audit Committee that the Finance Commission approve the agencies' Second Quarter Financial Statements. Jay Shands seconded and the motion was adopted.

**Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Texas Financial Education Endowment Fund.**

Committee Member McCool made a recommendation on behalf of the Audit Committee that the Finance Commission approve the Texas Financial Education Endowment Fund report. Will Lucas seconded and the motion was adopted.

**Discussion of and Possible Vote Taking Action on the Finance Commission Agency Heads' Fiscal Year 2014 Mid-Term Accomplishment Reports.**

***Office of Consumer Credit Commissioner***

Commissioner Pettijohn provided an overview of the progress on the agency's priorities for FY14. She highlighted areas within the motor vehicle sales finance and the credit access businesses (CAB) examination process.

The Commissioner continued with an update of the regulatory and CAB licensing areas. The implementation and project goals of the new online licensing and registration system were also discussed.

Commissioner Pettijohn highlighted the accomplishments and objectives for the Texas Financial Education Endowment Fund. She concluded her report with discussion of the agency's stakeholder outreach and communication efforts. The agency continues to be very active in this area and to work closely with the targeted audience groups.

### ***Department of Banking***

Commissioner Cooper provided an overview of the progress on the agency's priorities for FY14. He continued with a discussion of the agency's state and national legislative activities.

The Commissioner highlighted the regulatory activities noting the examination activity and enforcement action areas. He commented on Stephanie Newberg being the President of the Money Transmitter Regulators Association (MTRA), and the positive relationships the agency has established at the national supervisory levels.

### ***Department of Savings and Mortgage Lending***

Commissioner Foster provided an overview of progress on the agency's priorities for FY14. He continued by highlighting the objectives and goals for the department's legislative agenda.

The Commissioner summarized the two areas where the agency's lack of statutory and legislative authority within mortgage servicers and mortgage banker entities. These shortfalls in supervisory authority will lead to requested legislative changes in 2015, and have been previously discussed in both the prior Finance Commission meeting and with the agency's Mortgage Industry Advisory Committee.

He commented on the lack of coordination and participation with the Attorney General's Mortgage Fraud Task Force to expedite a final resolution of regulatory concerns.

Commissioner Foster summarized the objectives and goals within the licensing area to ensure compliance, accuracy and needed penalty assessment for the Mortgage Call Reports (MCR).

Stacy London made a motion that the Finance Commission accept the Finance Commission Agencies' Fiscal Year 2014 Mid-Term Accomplishment Reports. Larry Patton seconded and the motion was adopted.

### **Discussion of the Report of the Financial Condition of the State Banking System. (Bound separately from the packet)**

Chairman White commended the Texas Department of Banking on the educational and informative report.

Bob Bacon provided an overview of the March 2014 Texas State Banking System report. He highlighted the condition of the state bank system and compared it to previous years while discussing the general improvement of the industry.

There was discussion among members with Bob Bacon and Commissioner Cooper addressing the questions.

### **Office of Consumer Credit Commissioner**

#### **Industry Status and Departmental Operations:**

Commissioner Pettijohn discussed the agency's executive summary report and highlighted the first six months results of the examination and enforcement areas. The monies returned to consumers through the examination and restitution process was also discussed.

The Commissioner provided an update of the consumer protection activities while providing an overview and comparison of examinations between September 2013- February 2014. She noted the agency's production hours and agency staff training to assist with the examinations process. She discussed the continued and significant improvement and acceptable levels of compliance within all examinations.

Commissioner Pettijohn highlighted the investigations completion report and assessed pending issues in the enforcement actions area. She discussed the standard complaints report noting an increase in complaints from law enforcement relating to pawn shop descriptions of pledged merchandise. A notable

decline in complaints within the motor vehicle sales financing area was also discussed. There was discussion among members with Commissioner Pettijohn addressing the questions.

The Commissioner summarized the licensing report commenting on the strength and growth within the regulated lender and motor vehicle sales financing areas. A significant decline of mortgage loan originators licenses was also addressed.

She discussed the CAB report and noted possible upcoming rulemaking actions from the Consumer Financial Protection Bureau (CFPB) regarding payday lending. There was discussion among members with Commissioner Pettijohn and Karl Hubenthal addressing the questions.

Commissioner Pettijohn continued with an update and progress report of the agency's information and technology projects. She discussed her agency's participation along with other state agencies at a forum related to cybersecurity issues sponsored by the Department of Information Resources (DIR) . A new requirement that all state agencies file a very detailed security plan with DIR is mandated by the middle of October 2014. She also stated that the agency continues to receive positive user feedback regarding the new (ALECS) online portal system.

The Commissioner provided an overview of the strategic planning process and stakeholder group participation. She commented on the request from the Crafted Precious Metals Dealer Stakeholders focus group to meet and discuss the effective regulation of the industry.

She continued with an update of the agency's human resources report highlighting the staffing and employee data.

The Commissioner concluded her discussion by providing an overview of the legal report and highlighting the agency's enforcement actions.

**Discussion of and Possible Vote to Take Action on the Publication for Comment of Proposed Amendments to 7 TAC, Chapter 83, Subchapter A, Concerning Rules for Regulated Lenders, Resulting from Rule Review.**

Laurie Hobbs provided an overview of the proposed rule.

Will Lucas made a motion to approve the Publication for Comment of Proposed Amendments to 7 TAC, Chapter 83, Subchapter A, Concerning Rules for Regulated Lenders, Resulting from Rule Review. Jay Shands seconded and the motion was adopted.

**Department of Banking**

**Industry Status and Department Operations:**

Commissioner Cooper provided an overview of banking administrative actions and the agency's compliance with examination priorities.

The Commissioner continued with a summary of the CAMEL ratings noting the total number of banks is now 282, continuing to decline primarily due to bank consolidations. Problem banks have been reduced currently to 15, and this continues to be a positive trend within the banking industry. He commented that currently there were two FDIC past due bank examinations.

Commissioner Cooper discussed the agency's participation in the annual Conference of State Bank Supervisors (CSBS) Legislative Fly-in conference held in Washington, D.C. There were 37 states represented at the conference making legislative contacts.

The Commissioner gave an update on the 2013 Rate the Department Survey and noted almost all responses reflected positive feedback or comments from the supervised banking entities.

Commissioner Cooper provided an overview of the agency's corporate activities and detailed the applications for mergers and conversions. There have been four banks convert from a national bank charter to a state bank charter.

The Commissioner provided an update of the special audit division activities report. He summarized the department's past due examination report noting a decrease in delinquent examinations.

Commissioner Cooper introduced Daniel Wood. Mr. Wood provided a summary of the digital money and network payment process. There was discussion among members regarding the virtual currency system with Mr. Wood and Commissioner Cooper addressing the questions.

Commissioner Cooper provided an overview of strategic support and other divisional activity items. He commented on the launch of the agency's redesigned website and also mentioned the upcoming financial literacy webinar.

The Commissioner further reported on the agency's staffing while providing current employee hiring data information. He introduced the agency's new General Counsel Catherine Reyer and announced the promotion of Debby Loomis to Deputy General Counsel.

Debby Loomis concluded the discussion by providing an update on the legal division report.

**Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §25.1, Concerning Prepaid Funeral Contract Forms – Definitions.**

Debby Loomis provided an overview of the proposed rule.

Jay Shands made a motion to approve the Publication for Comment of Proposed Amendments to 7 TAC §25.1, Concerning Prepaid Funeral Contract Forms – Definitions. Will Lucas seconded and the motion was adopted.

**Department of Savings and Mortgage Lending**

**Industry Status and Departmental Operations:**

Commissioner Foster provided an overview of the agency's executive summary report while highlighting the improvements within the CAMELS ratings. He further reported on the continual improving industry conditions and discussed the thrift assessment chart with current calculations.

The Commissioner provided a summary of the residential mortgage loan originators activity report. He discussed the legislative authority for mortgage entities regarding changes in filing mortgage call reports. The agency may now block renewals for a company license and assess administrative penalties due to not filing timely reports. There continues to be a trend of receiving over 500 new license applications with the department consecutively reaching these total numbers for the past thirty months, which has led to higher than anticipated revenue levels.

He continued with an update on the mortgage examinations area reporting the number had decreased compared to fiscal year 2013, although the number of individual licensees covered had increased by 30%.

Commissioner Foster provided an overview of the consumer complaints area and reported an increase to 62% of total complaints within mortgage servicing. The agency will now send out a satisfaction survey every 60 days, which significantly increases the consumer complaints response rate.

The Commissioner highlighted the recent Mortgage Industry Advisory Committee meeting held on March 19, 2014, and commented on the discussion of suggestions for penalty assessments.

Commissioner Foster concluded his discussion by providing an overview of the agency's performance and efficiency measures.

#### **Finance Commission Matters (Continued)**

Chairman White called for an Executive Session at 11:18 a.m.

Chairman White reconvened the Open Meeting of the Finance Commission at 11:46 p.m.

#### **Discussion of and Possible Action Regarding Personnel Matters Pursuant to Section 551.074, Texas Government Code: Deliberations with Respect to the Duties of a Person Holding the Position of Executive Director of the Finance Commission, Deliberations with Respect to the Duties of Persons Holding the Position of Agency Commissioner Positions, and Other Staff.**

There was discussion with voting on the agenda item.

Stacy London made a motion to grant authority to the ad hoc search committee and/or Chair of the Finance Commission to negotiate as appropriate with final candidates to extend the Texas Department of Savings and Mortgage Lending Commissioner employment offer. Susan Burton seconded and the motion was adopted.

Jay Shands made a motion that the Executive Director's compensation of \$12,000 for each fiscal year (or \$1,000 per month) move with the position change to Commissioner Cooper, effective May 1, 2014. Susan Burton seconded and the motion was adopted.

#### **Discussion of and Possible Action Regarding Facility Planning and Real Property Matters Pursuant to Section 551.072, Texas Government Code: Deliberations Regarding the Purchase, Exchange, Lease or Value of Real Property.**

There was no discussion or vote on the agenda item.

#### **Discussion of and Possible Action Regarding Anticipated and Pending Litigation Pursuant to Section 551.071, Texas Government Code, for the purpose of seeking the advice or attorney-client privileged communications from our attorneys regarding pending and contemplated litigation.**

There was no discussion or vote on the agenda item.

There being no further business, Commission Chairman Bill White adjourned the meeting of the Finance Commission at 11: 48 a.m.

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Bill White, Chairman  
Finance Commission of Texas

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Doug Foster, Executive Director of the  
Finance Commission of Texas

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Tammy Wooten, Executive Assistant  
Finance Commission of Texas

# **Finance Commission of Texas**

## **CONSENT AGENDA**

**April 11, 2014**

### **Finance Commission Matters (A1)**

Review and Approval of the Minutes of the February 21, 2014, Finance Commission Meeting.

### **Office of Consumer Credit Commissioner (B2)**

Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Chapter 85, Subchapter A, Concerning Rules of Operation for Pawnshops, Resulting from Rule Review.

### **Department of Savings and Mortgage Lending (D4)**

Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §80, Subchapter C, Concerning Required Disclosures to Correct Graphics.

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# MINUTES OF THE FINANCE COMMISSION MEETING

Thursday, April 17, 2014

The Finance Commission of Texas met in a called meeting on Thursday, April 17, 2014, at the William P. Hobby Airport, Conference Room A, 7800 Airport Blvd, Houston, Texas.

## **Members in attendance:**

Bill White, Finance Commission Chairman  
Susan Burton, Finance Commission Member  
Cindy Lyons, Finance Commission Member  
Stacy London, Finance Commission Member  
Will Lucas, Finance Commission Member  
Lori McCool, Finance Commission Member  
Jonathan Newton, Finance Commission Member  
Jay Shands, Finance Commission Member

## **Members absent:**

Paul Plunket, Finance Commission Vice Chair  
Larry Patton, Finance Commission Member  
Victor Leal, Finance Commission Member

## **Others in attendance:**

Doug Foster, Executive Director to the Finance Commission and Commissioner, Texas Department of Savings and Mortgage Lending (SML)  
James L. Crowson, Assistant Attorney General, Office of the Attorney General

Finance Commission Chairman Bill White announced a quorum with eight members present and called the meeting to order at 9:00 a.m.

## **Finance Commission Matters:**

### **Personnel Matters**

- A. Discussion of the Selection Process for the Position of Texas Department of Savings and Mortgage Lending Commissioner.

Search Committee Chair Stacy London reported the committee had scheduled five finalists for the position of Texas Department of Savings and Mortgage Lending Commissioner to meet with the Finance Commission. She also provided an overview of the committee's efforts in seeking candidates and the selection process for this position.

Chairman White announced at 9:03 a.m. that the Finance Commission would enter into Executive Session with respect to deliberating personnel matters under Section 551.074, Texas Government Code. Chairman White announced that no final action, decision, or vote with regard to a matter deliberated in Executive Session would be made until the Commission reconvenes in an open meeting. Chair White stated the Finance Commission anticipated it would be in Executive Session for approximately 5 hours.

Chairman White reconvened the open meeting of the Finance Commission at 12:37 p.m.

B. Discussion of the Interviews of Candidates and Possible Vote to Appoint a new Texas Department of Savings and Mortgage Lending Commissioner.

Search Committee Member Newton discussed the interview process of the five qualified finalists for the Commissioner's position for the Texas Department of Savings and Mortgage Lending. He continued by commending Search Committee Chair London for her diligent work and efforts in reference to the selection of prospective candidates.

Jonathan Newton made a motion that Caroline Jones be appointed the position of Commissioner for the Texas Department of Savings and Mortgage Lending. Susan Burton seconded and the motion was adopted.

There being no further business, Commission Chairman Bill White adjourned the meeting of the Finance Commission at 12:39 p.m.

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Bill White, Chairman  
Finance Commission of Texas

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Doug Foster, Executive Director of the  
Finance Commission of Texas

## **Finance Commission of Texas**

### **CONSENT AGENDA**

**June 20, 2014**

#### **Finance Commission Matters (A1)**

Review and Approval of the April 11, 2014 and April 17, 2014 Minutes of the Finance Commission Meeting.

#### **Finance Commission Matters (A6)**

Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 8, Joint Financial Regulatory Agencies, §153.1, §153.5, §153.15, and §153.51, Concerning Home Equity Lending.

#### **Department of Banking (B2)**

Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §25.1, Concerning Prepaid Funeral Contract Forms – Definitions.

#### **Office of Consumer Credit Commissioner (D2)**

Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Chapter 83, Subchapter A, Concerning Rules for Regulated Lenders, Resulting from Rule Review.

Rule	Short Title/Purpose	Project Date for Presentation to Finance Commission (Proposal or Adoption)	Agency
1. 7 TAC §§15.4, 21.4, 33.13	Rules for Corporate Activities Rules for Corporate Trust Company Activities Rules for MSB License <i>Proposed Amendments</i> Rules for MSB Licenses <i>Proposed Amendments</i>	6/20/14 Proposal	DOB
2. 7 TAC §33.27		6/20/14 Proposal	DOB
3. 7 TAC, §25.1	Rules for Prepaid Funeral Contract Forms <i>Definitions</i>	06/20/14 adoption	DOB
4. 7 TAC, Chapter 83, Subchapter A	Rules for Regulated Lenders <i>Adopt Amendments (from Rule Review)</i> To provide clarification and consistent terminology; to incorporate agency procedures and streamline processes; to make final changes in accordance with recent legislation; and to make technical corrections.	06/20/14 adoption	OCCC
5. 7 TAC, Part 8, Chapter 153	Home Equity Lending <i>Proposed Amendments</i> To implement the Texas Supreme Court's decision in <i>Finance Commission of Texas v. Norwood</i> .	06/20/14 proposal	Joint Fin. Regulatory Agencies
6. 7 TAC, Part 8, Chapter 153	Home Equity Lending <i>Adopt Amendments</i> To implement the Texas Supreme Court's decision in <i>Finance Commission of Texas v. Norwood</i> .	10/17/14 adoption	Joint Fin. Regulatory Agencies
7. 7 TAC, Part 1, Chapter 2	Residential Mortgage Loan Originators Applying for Licensure with the OCCC under the SAFE Act <i>Rule Review</i>	12/12/14 proposal	OCCC
8. 7 TAC, Part 5, Chapter 86	Retail Creditors <i>Rule Review</i>	12/12/14 proposal	OCCC

**A. Finance Commission Matters**

6. Discussion of and Possible Vote to Take Action on the Publication for Comment of Proposed Amendments to 7 TAC, Part 8, Joint Financial Regulatory Agencies, §§153.1, 153.5, 153.15, and 153.51, Concerning Home Equity Lending.

**PURPOSE:** The main purpose of the proposed amendments is to implement the Texas Supreme Court's decision in *Finance Commission of Texas v. Norwood*, 418 S.W.3d 566 (Tex. 2013). In *Norwood*, the court held that portions of three interpretations adopted by the commissions were invalid: §§153.1, 153.5, and 153.15.

**RECOMMENDED ACTION:** The agencies request that the Finance Commission approve the proposed amendments to 7 TAC §§153.1, 153.5, 153.15, and 153.51 for publication in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we approve for publication and comment the proposed amendments to 7 TAC §§153.1, 153.5, 153.15, and 153.51.

*Title 7. Banking and Securities*  
*Part 8. Joint Financial Regulatory Agencies*  
*Chapter 153. Home Equity Lending*  
*§§153.1, 153.5, 153.15, & 153.51*

The Finance Commission of Texas and the Texas Credit Union Commission ("commissions") propose amendments to the following home equity lending interpretations: §§153.1, concerning Definitions, 153.5, concerning Three percent fee limitation, 153.15, concerning Location of Closing, and 153.51, concerning Consumer Disclosure.

The amendments apply the administrative interpretation of the home equity lending provisions of Article XVI, Section 50 of the Texas Constitution ("Section 50") allowed by Section 50(u) and Texas Finance Code, §§11.308 and 15.413.

The main purpose of the proposed amendments is to implement the Texas Supreme Court's decision in *Finance Commission of Texas v. Norwood*, 418 S.W.3d 566 (Tex. 2013). In *Norwood*, the court held that portions of three interpretations adopted by the commissions were invalid: §§153.1, 153.5, and 153.15.

In 1997, the Texas Constitution was amended to authorize home equity loans. After further amendments in 2003, the commissions were authorized to adopt interpretations of the constitution's home equity provisions, subject to the requirements of the Texas Administrative Procedure Act. The commissions adopted their interpretations in 2004. A group of homeowners sued the commissions, challenging several of the adopted interpretations. The case was ultimately appealed to the Texas Supreme Court and

resulted in the court's decision in *Finance Commission of Texas v. Norwood*.

In *Norwood*, the court invalidated certain provisions interpreting Section 50(a)(6)(E), which provides that a home equity loan may not "require the owner or the owner's spouse to pay, in addition to any interest, fees to any person that are necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceed, in the aggregate, three percent of the original principal amount of the extension of credit." The court invalidated §153.1(11) of the commissions' interpretations, which defined "interest" for purposes of the three percent limitation as "interest as defined in the Texas Finance Code §301.002(4) and as interpreted by the courts." The court held that interest means "the amount determined by multiplying the loan principal by the interest rate." 418 S.W.3d at 588. The court also invalidated paragraphs (3), (4), (6), (8), (9), and (12) of §153.5, which applied the commissions' original definition of "interest" to several specific types of charges for purposes of the three percent limitation. In the supplemental opinion, the court explained that interest includes per diem interest and legitimate discount points, and that these amounts are not included in the three percent limitation. 418 S.W.3d at 596.

The court also invalidated provisions interpreting Section 50(a)(6)(N), which provides that a home equity loan must be "closed only at the office of the lender, an attorney at law, or a title company." The court invalidated §153.15(2), which allowed

a lender to accept a properly executed power of attorney authorizing someone to close a loan on a homeowner's behalf. It also invalidated §153.15(3), which allowed a lender to accept the homeowner's consent by mail. In the supplemental opinion, the court explained that "a power of attorney must be part of the closing to show the attorney-in-fact's authority to act." 418 S.W.3d at 596.

After the court issued its supplemental opinion, the Texas Department of Banking, the Texas Department of Savings and Mortgage Lending, the Office of Consumer Credit Commissioner, and the Texas Credit Union Department ("agencies") prepared an initial draft of amendments implementing the court's decision. The agencies distributed the initial draft to home equity stakeholders for precomments, in order to prepare an informed and well-balanced proposal for the commissions. The agencies received written precomments from several stakeholders.

Upon review of the precomments, the agencies prepared a second precomment draft incorporating several of the suggestions from the initial round of precomments. The agencies sent this second precomment draft to stakeholders, together with written explanations of the changes that had been made from the initial draft. The agencies received additional written precomments on the second draft.

The agencies have incorporated certain suggestions offered by stakeholders into the proposed amendments. The agencies believe that this early participation of stakeholders has greatly benefited the resulting proposal.

As stated earlier, the main purpose of the proposed amendments is to implement the Texas Supreme Court's decision in *Finance Commission of Texas v. Norwood*. The

individual purposes of each amendment are provided below.

The proposed amendment to §153.1(11) replaces the previous definition of "interest" with the definition used by the court. One precommenter suggested including the phrase "over a period of time" in the definition. This phrase is included in the proposed amendment in order to clarify the time component in the definition. In addition, in its supplemental opinion, the court used the phrase "over a period of time" in applying the general definition of "interest." 418 S.W.3d at 596.

The precise mathematical formulation of interest and the exact nature of the applicable time period will be described in the loan contract. For example, in a loan contract using the true-daily-earnings method, the interest is calculated by dividing an annual rate by 365 and multiplying that amount by the outstanding principal each day. Other loan contracts will use different methods. Because different contracts will describe different methods for calculating interest, it is unnecessary for the amendments to specify a precise method. The purpose of the amendment is to describe how an amount already calculated under the contract will be excluded from the three percent limitation. The definition as proposed appears to achieve this purpose.

The proposed amendment to §153.5(3)(A) specifies that per diem interest is interest and is not subject to the three percent limitation. In the supplemental opinion, the court considered all per diem interest to be interest, as did the parties. The court stated: "We agree with [the parties] that per diem interest is still interest, though prepaid; it is calculated by applying a rate to principal over a period of time." 418 S.W.3d

at 596. In other words, the fact that per diem interest is prepaid does not affect its basic character as interest.

The proposed amendment to §153.5(3)(B) specifies that legitimate discount points are interest and are not subject to the three percent limitation. The amendment also identifies the conditions that must be satisfied in order for discount points to be considered legitimate under the court's supplemental opinion, and it provides that a lender may rely on an established system to evidence that the discount points it offers are legitimate.

The proposed amendments to paragraphs (4), (6), (8), (9), and (12) of §153.5 add the phrase "as defined by §153.1(11) of this title" after "that are not interest" in provisions describing charges that are subject to the three percent limitation.

In response to precomments, paragraphs (9) and (12), regarding charges to maintain and service the loan, are also amended to provide clarity and delete redundant text. These changes are intended to be nonsubstantive. Charges to maintain or service the loan that are not customarily included at inception because they arise due to subsequent events (e.g., nonsufficient funds fees, payoff statement fees, fees for an updated flood determination) would continue not to be subject to the three percent limitation under the amended text.

The proposed amendment to §153.15(2) specifies that any power of attorney allowing an attorney-in-fact to execute closing documents must be signed at the office of the lender, an attorney at law, or a title company. It also provides that a lender may rely on an established system to

evidence the date and place at which a power of attorney was signed. In response to precomments, the amendment permits the use of an affidavit or written certification of a person who was present when the power of attorney was executed.

Several stakeholders expressed concern that the amendments would somehow restrict the use of powers of attorney to the circumstances specified in the amendments. The amendments acknowledge three situations in which powers of attorney can be used (closing documents, signing the required consent, and receiving the consumer disclosure), but this does not prohibit the use of a power of attorney in other circumstances. The purpose of the amendments is to address the portion of the court's decision relating to the location of closing. It would be outside the intended scope of the amendments to provide a comprehensive statement of the circumstances in which a lender can (or should) use powers of attorney, or a statement of the conditions that must be satisfied in every power of attorney relating to a home equity loan. Apart from the circumstances described in the proposed amendments, the use of powers of attorney is largely an underwriting decision for the lender.

One stakeholder suggested that the amendments specify that the power of attorney must be signed at a permanent physical address. This change does not seem necessary. The current text of §153.15(1) already specifies that the authorized physical location for closing must be a permanent physical address. This provision should be sufficient to prohibit lenders from circumventing the interpretations through the use of nonpermanent locations.

The proposed amendment to §153.15(3) specifies that the required consent form must be signed at the office of the lender, an attorney at law, or a title company. In response to a precomment, the proposed amendment also specifies that the consent may be signed by an attorney-in-fact described by paragraph (2).

One stakeholder expressed concern about executing the consent form at one location and sending it to another. The amendments do not prohibit any party from sending documents from one place to another, as long as the documents are executed at an authorized location.

In §153.51, proposed new paragraph (5) specifies that if a power of attorney described by §153.15(2) has been executed, then the attorney-in-fact may accept the disclosures required under Section 50(g).

Harold Feeney, Credit Union Commissioner, on behalf of the Texas Credit Union Commission and Leslie L. Pettijohn, Consumer Credit Commissioner, on behalf of the Finance Commission of Texas have determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of administering the interpretations.

Commissioner Feeney and Commissioner Pettijohn have also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of the amendments will be to create standards and guidelines for both lenders and borrowers, fostering a stable environment for the extension of home equity loans.

There is no anticipated cost to persons who are required to comply with the amendments as proposed. Any costs are imposed by the constitution and are not imposed by the proposed amendments. There will be no adverse economic effect on small or micro-businesses. There will be no effect on individuals required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to [laurie.hobbs@occc.state.tx.us](mailto:laurie.hobbs@occc.state.tx.us). To be considered, a written comment must be received on or before the 31st day after the date the proposed amendments are published in the *Texas Register*. At the conclusion of the 31st day after the proposed amendments are published in the *Texas Register*, no further written comments will be considered or accepted by the commissions.

The amendments are proposed under Article XVI, Section 50(u) of the Texas Constitution and Texas Finance Code, §§11.308 and 15.413, which authorize the commissions to adopt interpretations of Article XVI, Section 50(a)(5)-(7), (e)-(p), (t), and (u) of the Texas Constitution.

The constitutional provisions affected by the proposed amendments are contained in Article XVI, Section 50 of the Texas Constitution.

*§153.1. Definitions.*

Any reference to Section 50 in this interpretation refers to Article XVI, Texas Constitution, unless otherwise noted. These words and terms have the following

meanings when used in this chapter [section], unless the context indicates otherwise:

(1) - (10) (No change.)

(11) Interest--As used in Section 50(a)(6)(E), "interest" means the amount determined by multiplying the loan principal by the interest rate over a period of time. [Interest--interest as defined in the Texas Finance Code §301.002(4) and as interpreted by the courts.]

(12) - (15) (No change.)

*§153.5. Three percent fee limitation: Section 50(a)(6)(E)*

An equity loan must not require the owner or the owner's spouse to pay, in addition to any interest, fees to any person that are necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceed, in the aggregate, three percent of the original principal amount of the extension of credit.

(1) - (2) (No change.)

(3) Charges that are Interest. Charges an owner or an owner's spouse is required to pay that constitute interest under §153.1(11) of this title (relating to Definitions) [the law, for example per diem interest and points,] are not fees subject to the three percent limitation.

(A) Per diem interest is interest and is not subject to the three percent limitation.

(B) Legitimate discount points are interest and are not subject to the three percent limitation. Discount points are

legitimate if the discount points truly correspond to a reduced interest rate and are not necessary to originate, evaluate, maintain, record, insure, or service the loan. A lender may rely on an established system of verifiable procedures to evidence that the discount points it offers are legitimate. This system may include documentation of options that the owner is offered in the course of negotiation, including a contract rate without discount points and a lower contract rate based on discount points.

(4) Charges that are not Interest. Charges an owner or an owner's spouse is required to pay that are not interest under §153.1(11) of this title are fees subject to the three percent limitation.

(5) (No change.)

(6) Charges to Originate. Charges an owner or an owner's spouse is required to pay to originate an equity loan that are not interest under §153.1(11) of this title are fees subject to the three percent limitation.

(7) (No change.)

(8) Charges to Evaluate. Charges an owner or an owner's spouse is required to pay to evaluate the credit decision for an equity loan, that are not interest under §153.1(11) of this title, are fees subject to the three percent limitation. Examples of these charges include fees collected to cover the expenses of a credit report, survey, flood zone determination, tax certificate, title report, inspection, or appraisal.

(9) Charges to Maintain. Charges paid by an owner or an owner's spouse [at the inception of an equity loan] to maintain an equity [the] loan that are not interest under §153.1(11) of this title are fees subject

to the three percent limitation if the charges are paid at the inception of the loan, or if the charges are customarily paid at the inception of an equity loan but are deferred for later payment after closing. [~~Charges that are not interest that an owner pays at the inception of an equity loan to maintain the equity loan, or that are customarily paid at the inception of an equity loan to maintain the equity loan, but are deferred for later payment after closing, are fees subject to the three percent limitation.~~]

(10) - (11) (No change.)

(12) Charges to Service. Charges paid by an owner or an owner's spouse [~~at the inception of an equity loan~~] for a party to service an equity [~~the~~] loan that are not interest under §153.1(11) of this title are fees subject to the three percent limitation if the charges are paid at the inception of the loan, or if the charges are customarily paid at the inception of an equity loan but are deferred for later payment after closing. [~~Charges that are not interest that an owner pays at the inception of an equity loan to service the equity loan, or that are customarily paid at the inception of an equity loan to service the equity loan, but are deferred for later payment after closing, are fees subject to the three percent limitation.~~]

(13) - (16) (No change.)

*§153.15. Location of Closing: Section 50(a)(6)(N)*

An equity loan may be closed only at an office of the lender, an attorney at law, or a title company. The lender is anyone authorized under Section 50(a)(6)(P) that advances funds directly to the owner or is identified as the payee on the note.

(1) (No change.)

(2) Any [~~A lender may accept a properly-executed~~] power of attorney allowing an [~~the~~] attorney-in-fact to execute closing documents on behalf of the owner or the owner's spouse must be signed by the owner or the owner's spouse at an office of the lender, an attorney at law, or a title company. A lender may rely on an established system of verifiable procedures to evidence compliance with this paragraph. For example, this system may include one or more of the following:

(A) a written statement in the power of attorney acknowledging the date and place at which the power of attorney was executed;

(B) an affidavit or written certification of a person who was present when the power of attorney was executed, acknowledging the date and place at which the power of attorney was executed; or

(C) a certificate of acknowledgement signed by a notary public under Chapter 121, Civil Practice and Remedies Code, acknowledging the date and place at which the power of attorney was executed.

(3) The [~~A lender may receive~~] consent required under Section 50(a)(6)(A) must be signed by the owner and the owner's spouse, or an attorney-in-fact described by paragraph (2) of this subsection, at an office of the lender, an attorney at law, or a title company [~~by mail or other delivery of the party's signature to an authorized physical location and not the homestead~~].

*§153.51. Consumer Disclosure: Section 50(g)*

An equity loan may not be closed before the 12th day after the lender provides the owner with the consumer disclosure on a separate instrument.

(1) - (4) (No change.)

(5) If the owner has executed a power of attorney described by §153.15(2) of this title (relating to Location of Closing: Section 50(a)(6)(N)), then the lender may provide the consumer disclosure to the attorney-in-fact instead of providing it to the owner.

**Certification**

The agencies hereby certify that the proposal has been reviewed by legal counsel and found to be within the commissions' legal authority to adopt.

Issued in Austin, Texas on June 20, 2014.

Leslie Pettijohn  
Consumer Credit Commissioner  
Joint Financial Regulatory Agencies

**B.**

**Texas Department of Banking**

**Industry**

**and**

**Departmental Operations**

**and**

**Legislative Activities**

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Charles G. Cooper  
Commissioner

## TEXAS DEPARTMENT OF BANKING

2601 North Lamar Blvd., Austin, Texas 78705  
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[www.dob.texas.gov](http://www.dob.texas.gov)

To: Finance Commission Members

From: Kurt Purdom, Director of Bank & Trust Supervision

Date: June 6, 2014

Subject: Summary of the Bank & Trust Supervision Division Activities

Bank and Trust Supervision					FY 2014							
8/31/2012		8/31/2013			11/30/2013		2/28/2014		5/31/2014		8/31/2014	
Industry Profile (# / Assets (billions as of 12/31/2013))												
# Banks	296	\$191.9	283	\$202.6	283	\$208.8	282	\$217.4	276	\$219.1		
# Trust Co. (1)	22	\$21.7	21	\$27.0	21	\$28.2	21	\$39.5	21	\$40.3		
# FBA/FBB	10	\$83.6	10	\$82.1	10	\$91.8	10	\$91.1	10	\$91.9		
Examinations Performed												
Banks	165		145		31		33		*			
Trust Co.	32		35		8		5		*			
FBA/FBB	3		6		0		0		*			
Bank CAMELS (# / %)												
1	120	40.5%	125	44.2%	124	43.8%	127	45.0%	127	46.0%		
2	135	45.6%	136	48.1%	140	49.5%	138	49.0%	135	48.9%		
3, 4, & 5	41	13.9%	22	7.8%	19	6.7%	17	6.0%	14	5.1%		
Non-Rated	0	-	0	-	0	-	0	-	0	-		

\* Third quarter 2014 performance measure data hasn't been finalized but will be provided in the next summary.

(1) Fiduciary assets for non-exempt trust companies only.

The Department considers any bank with a Uniform Financial Institutions Composite Rating of 3, 4, or 5, to be a problem institution. As the table above indicates, the number of problem banks continues to contract and as of May 31, 2014, problem banks total 14. As the Texas economy gradually improves, the total number of problem institutions is nearing a more normal plateau, which we expect to range between 3% and 5% of the total number of institutions.

Administrative/Enforcement Actions (Number outstanding as of the date indicated)		FY 2014				
	8/31/2012	8/31/2013	11/30/2013	2/28/2014	5/31/2014	8/31/2014
<b>Banks - Safety and Soundness</b>						
Formal	15	12	11	8	6	
Informal	50	26	25	23	21	
<b>Banks - Bank Secrecy Act (BSA)</b>						
Formal	0	0	0	0	0	
Informal	1	3	1	1	1	
<b>Banks - Information Technology (IT)</b>						
Formal	0	0	0	0	0	
Informal	2	2	3	3	4	
<b>Trust Departments of Banks and Trust Companies</b>						
Formal	0	0	0	0	0	
Informal	1	1	1	1	1	
<b>Total Administrative/Enforcement Actions</b>						
Formal	15	12	11	8	6	
Informal	54	32	30	28	27	
<b>Total</b>	<b>69</b>	<b>44</b>	<b>41</b>	<b>36</b>	<b>33</b>	

Formal actions include Orders to Cease and Desist, Consent Orders and Written Agreements.

Informal actions include Determination Letters, Memoranda of Understanding, Commitment Letters and Board Resolutions.

Orders of Supervision, Orders of Conservatorship and Compliance actions are not included.

Compliance with Examination Priorities (Past Due Examinations)			
Entity Type	03/31/2014	04/30/2014	05/31/2014
<b>Commercial Banks</b>			
Total by Responsibility (TDOB/FDIC/FRB)	5/0/0	5/0/0	6/1/0
IT	3/0/0	0/0/0	3/0/0
Trust	0/0/0	0/0/0	0/0/0
<b>Foreign Bank Agencies</b>			
Total by Responsibility (TDOB/FRB)	0/0	0/0	0/0
<b>Trust Companies (TDOB)</b>			
IT	1	1	1
<b>Total of All Entities</b>			
Total by Responsibility (TDOB/FDIC/FRB)	9/0/0	6/0/0	11/1/0
<b>Total</b>	<b>9</b>	<b>6</b>	<b>12</b>

**Division Highlights**

- Special Operations and Conferences:
  - Review Examiner Wu participated in a regulatory panel at the Texas Bankers Association (TBA) Annual Compliance School held in San Antonio on April 4, 2014.
  - A conference call with the Division's Central Points of Contact, or CPCs, was held on April 7, 2014 to discuss report processing, scheduling and common concerns of the agency's banks over \$10 billion.
  - All personnel attended the agency's Examiners Conference held in San Antonio the week of April 14, 2014. Internal as well as external speakers provided training on a variety of topics during this four day event.
  - Commissioner Cooper and Director Purdom participated in a presentation to the Texas A&M Banking Program students on April 22, 2014 in College Station. Later in the week, Director Purdom participated in an Advisory Board meeting of the Texas A&M Banking Program.
  - Senior Trust Specialist Dave Leferink served as an instructor for trust training classes sponsored by the Conference of State Bank Supervisors (CSBS) the weeks of April 21, 2014 in Little Rock, Arkansas and May 5, 2014 in Denver, Colorado.
  - Commissioner Cooper participated in a regulatory panel at the TBA's Annual Convention held in Colorado Springs the week of May 5, 2014.
  - Commissioner Cooper, Deputy Commissioner Bacon, Director Purdom, General Counsel Reyer and Large Bank Specialist Susany attended the CSBS State Federal Supervisory Forum the week of May 12, 2014.
  - Commissioner Cooper, Deputy Commissioner Newberg, and Assistant General Counsel Dan Wood participated in a public hearing on emerging payments issues. The hearing, which was held in Chicago on May 16, 2014, was called at the direction of the CSBS Emerging Payments Task Force, in which Commissioner Cooper is a member.
  - A conference call of the agency's Strategic Planning Task Force was held on May 19, 2014 to discuss the initial draft of the agency's 2015 – 2019 Strategic Plan.
  - Several agency staff members served as instructors for an internal credit school held in Plano the week of May 19, 2014. Students listened to presentations about proper credit underwriting and documentation and then completed several case studies.
  - On May 21, 2014, Commissioner Cooper testified before the House Committee on Investments and Financial Services about the condition of the Texas banking industry and agency operations.
  - The Department hosted the first of five Community Bank Town Hall meetings in Lubbock on May 28, 2014 and Irving on June 6, 2014. The remaining meetings will be held in San Antonio, Tyler and Houston. The Independent Bankers Association of Texas and TBA are sponsoring the meetings. The purpose of the meetings is to bring community bankers together from across the state to discuss the challenges and opportunities that exist in their communities and on a national level. The results of a recent community bank survey will be discussed at each of these meetings. Attending for the Department were Commissioner Cooper, Deputy Commissioner Bacon, Directors

Purdum and Rodriguez, Financial Analyst Lena, the Regional Director and Regional Review Examiner from the respective regional office and other staff members.

The feedback garnered from the Community Bank Town Hall meetings will be used as support for a joint policy and research conference held in St. Louis on September 23-24, 2014. This conference is a joint effort of the CSBS and the Federal Reserve Bank of St. Louis. Commissioner Cooper and Texas community bank representatives will be participating in this conference and providing input based upon the discussions from the Town Hall meetings and the survey.

- Federal Programs:
  - TARP – Eighty of our banks applied to participate in the Capital Purchase Program under the Troubled Asset Relief Program (TARP). However, after significant withdrawals, only 21 banks received funds totaling \$2.8 billion, with one bank receiving about 80% of this total. As of May 6, 2014, four banks have not repaid any of their TARP funds. The total outstanding amount is approximately \$43.1 million.
  - Small Business Lending Fund (SBLF) – Twenty-three Texas state-chartered banks applied for funds under this program. Twelve banks received funds totaling \$255.7 million. The remaining banks either withdrew their applications or their applications were denied. As of April 30, 2014, one bank has paid back the SBLF funds, which leaves \$255.1 million outstanding.



Charles G. Cooper  
Commissioner

# TEXAS DEPARTMENT OF BANKING

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To: Finance Commission Members

From: Daniel Frasier, Director of Corporate Activities *DBF*

Date: June 3, 2014

Subject: Summary of the Corporate Division Activities

Corporate Activities		Applications and Notices Processed						
Entities	FY2011	FY2012	FY2013	3Q13	4Q13	1Q14	2Q14	3Q14
*Banks and Bank-related (holding companies, etc.)	212	205	197	67	47	73	58	*
Foreign Banks	6	7	1	0	1	0	0	*
Trust Companies	18	7	11	3	1	1	2	*
MSBs	14	18	21	7	4	8	6	*
PCSEAs	15	7	3	0	0	2	5	*
CVEs	4	5	4	0	0	0	3	*
Cemetery Brokers	-	-	-	-	-	-	3	*
Other (Use of Name)	62	44	67	22	15	6	10	*
Totals	331	293	304	99	68	90	87	*
		@Background Checks Completed						
Entities		FY2012	FY2013	3Q13	4Q13	1Q14	2Q14	3Q14
#Banks and Bank-related (holding companies, etc.)		76	71	15	24	40	51	*
Foreign Banks		0	0	0	0	0	0	*
Trust Companies		14	8	0	1	2	2	*
MSBs		199	130	64	15	33	27	*
PCSEAs		0	0	0	0	0	0	*
CVEs		0	0	0	0	0	0	*
Other		1	1	1	0	0	0	*
Totals		290	210	80	40	75	80	*

\*Third quarter fiscal year 2014 data has not been finalized and will be provided in the next summary.

# - Includes all types of applications and notices for each entity.

@ - Detailed tracking of background checks was initiated in mid-2011. Previously, only informal systems were available to track background checks.

Entities/Activities	Application and Notices Under Review (as of June 2, 2014)
*Banks and bank-related (holding companies, etc.)	36
Foreign Banks	1
Trust Companies	2
MSBs	6
PCSEAs	0
CVEs	0
Cemetery Broker	0
Other (Use of Name)	1
Totals	46

#### Division Highlights

- The volume of filing activity is moderate. The volume of bank merger, change of control, and branch related filings are particularly strong. Meanwhile, the level of MSB related applications received has moderated.
- Chartering, Conversion, and Merger Activity – The following transactions consummated in the 3<sup>rd</sup> quarter of the 2014 fiscal year:
  - *Banks*
    - Prosperity Bank, El Campo, completed their merger acquisition of The F&M Bank & Trust Company, Tulsa, OK
    - Independent Bank, McKinney, completed their merger acquisition of Bank of Houston, Houston
    - Fidelity Bank, Wichita Falls, completed their merger of First National Bank of Byers, Byers
    - First State Bank of Miami, Miami, completed their voluntary dissolution and liquidation
    - Union State Bank, Kerrville, merged with and into Pioneer Bank, SSB, Dripping Springs
  - *Trust Companies*
    - None



Charles G. Cooper  
Commissioner

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To: Finance Commission Members

From: Russell Reese, Director of Special Audits *[Signature]*

Date: June 2, 2014

Subject: Summary of the Special Audits Division Activities

Special Audits					FY 2014							
Entity	FY2012		FY2013		1 <sup>st</sup>		2 <sup>nd</sup>		3 <sup>rd</sup>		4 <sup>th</sup>	
Industry Profile (# / Assets (billions) )												
MSB	133	\$89.8	135	\$96.2	137	\$96.1	138	\$96.1	*	*		
PFC	395	\$3.2	389	\$3.3	387	\$3.3	386	\$3.3	*	*		
PCC	243	\$259.7	244	\$275.8	243	\$279.7	242	\$280.9	*	*		
*CB	-	-	-	-	-	-	3	n/a	*	*		
PCSEA	10	n/a	11	n/a	11	n/a	11	n/a	*	*		
CVE	4	n/a	3	n/a	3	n/a	3	n/a	*	*		
Examinations Performed												
MSB	81		94		12		22		*			
MSB Limited Scope	6		1		0		0		*			
MSB Accepted other State	2		14		3		1		*			
PFC	239		254		80		73		*			
PFC Limited Scope	7		8		4		0		*			
PCC	202		177		58		36		*			
PCC Limited Scope	7		6		6		0		*			
Ratings (# / %) Assigned to All Regulated Entities												
1	274	37%	278	37%	294	39%	299	39%	*	*		
2	356	47%	362	48%	346	46%	356	47%	*	*		
3, 4, & 5	122	16%	114	15%	113	15%	102	14%	*	*		
Noncompliance with Examination Priorities (Past Due)												
MSB	19		9		11		16		*			
PFC	48		41		27		3		*			
PCC	39		31		10		1		*			
Enforcement Actions												
MSB	0		2		0		0		*			
PFC	10		7		0		0		*			
PCC	5		6		0		0		*			
PCSEA	0		0		0		0		*			

## NOTES:

PCC \$ amounts reflected in the millions.

CB – Cemetery Brokers (new registration requirement)

Limited scope examinations do not receive a rating.

\*Third quarter fiscal year 2014 data has not been finalized and will be provided in the next summary.

**Division Activities:**

A Prepaid Funeral Guaranty Fund Advisory Council (Council) meeting was held on May 14<sup>th</sup>. The Council approved Trust Guaranty Fund claims totaling \$7,102.00 related to Washington Memorial Funeral Home, Dallas, Texas, and claims totaling \$11,196.75 related to Tom G. Walker Funeral Home, Coleman, Texas.

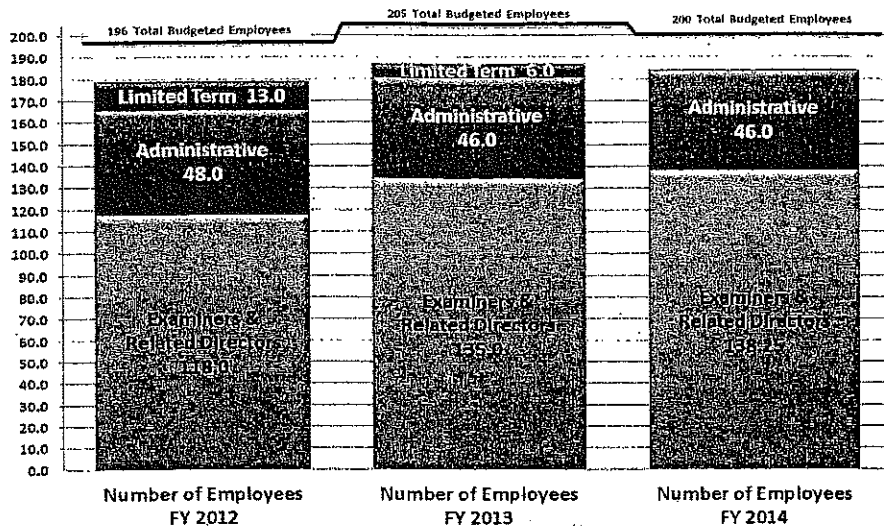
The Department of Banking received a subpoena to testify and produce documents at a deposition in a civil action on May 16<sup>th</sup> in Austin, Texas. Director Reese appeared on behalf of the Department. The civil action relates to National Prearranged Services Inc. (NPS), an insurance-funded preneed permit that was closed in April 2008. Previously, six individuals associated with NPS were sentenced to prison terms from 18 months to 10 years in November 2013 for defrauding purchasers of preneed funeral contracts of more than \$450 million in several states, including Texas.

On May 29<sup>th</sup>, the Commissioner entered into a Consent Order with an unlicensed money transmitter. Since 2010, the company has been offering certain money transmission services in Texas without the required license. The Consent Order required the company to pay an administrative penalty of \$60,000 to the Department. The company has also filed an application with the Department to obtain the required MSB license.

On June 11<sup>th</sup>, Director Reese will give a presentation on prepaid funeral contract regulations to the members of the Texas Funeral Directors Association's (TFDA) during their 2014 Annual Convention in Galveston. Director Reese will also staff a booth at the convention which provides an additional forum to communicate changes and other important information to the industry.

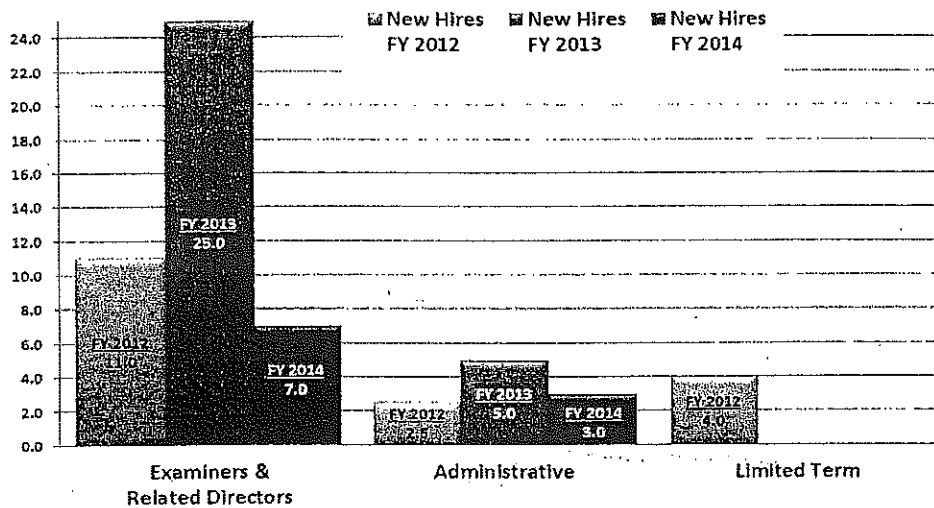
On June 17<sup>th</sup> and 18<sup>th</sup>, Deputy Commissioner Newberg and Senior Examiners Saucillo and Hardage will attend and give presentations during the Annual Southwest Border Anti-Money Laundering Alliance Conference in Tempe, Arizona. The purpose of the program is to enhance and better coordinate investigations and prosecutions of money laundering along the United States/Mexico Border Area.

**Texas Department of Banking**  
**Employee Data for Fiscal Years 2012, 2013 and 2014**



As of 5/31/2014

**Texas Department of Banking**  
**New Hire Data for Fiscal Years 2012, 2013 and 2014**

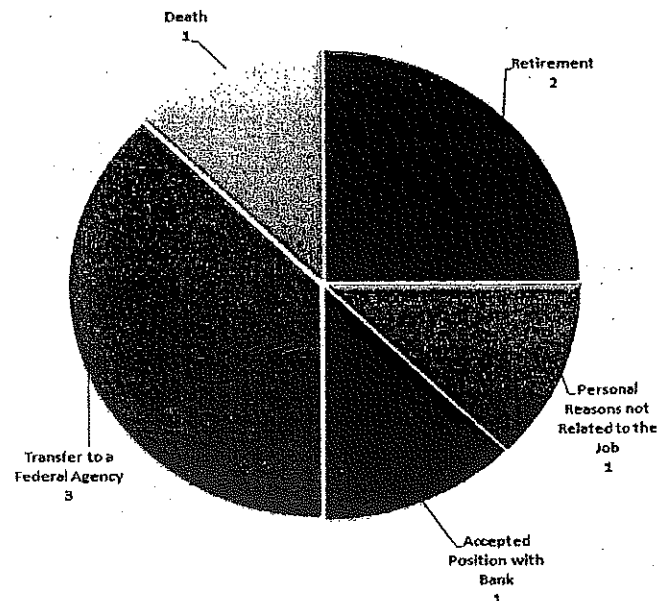
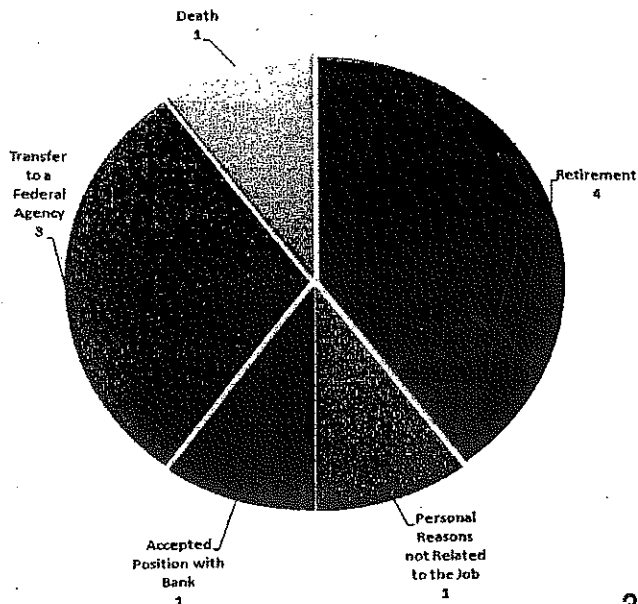


As of 5/31/2014

**FY 2014 Employee Turnover Reasons - As of 5/31/2014**

**All Employees - 10 Resignations**

**Financial Examiners Only - 8 Resignations**





Charles G. Cooper  
Commissioner

## TEXAS DEPARTMENT OF BANKING

2601 North Lamar Blvd., Austin, Texas 78705  
512-475-1300 / 877-276-5554  
[www.dob.texas.gov](http://www.dob.texas.gov)

**To:** Finance Commission Members

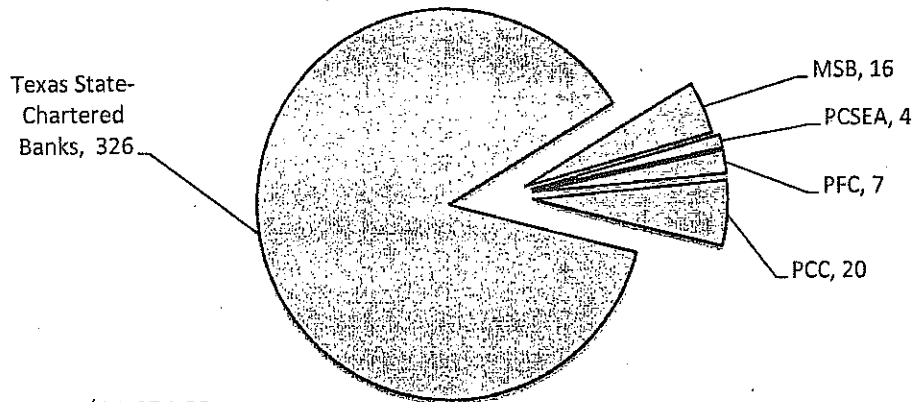
**From:** Wendy Rodriguez, Director of Strategic Support *WR*

**Date:** June 2, 2014

**Subject:** Summary of the Strategic Support Division Activities

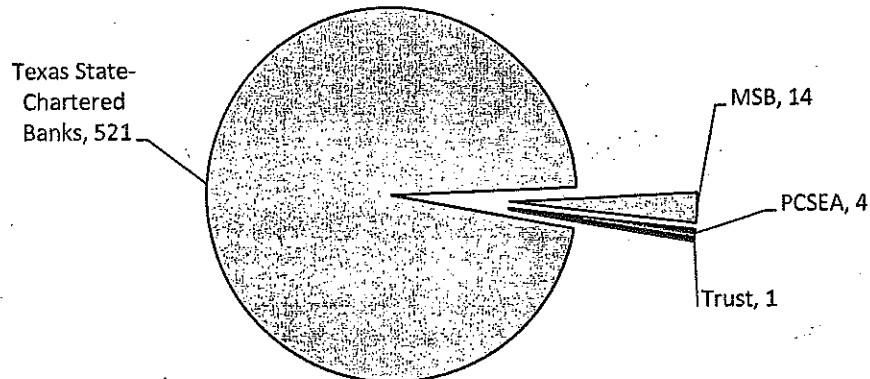
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**Complaints on Regulated Entities  
September 2013 - April 2014**



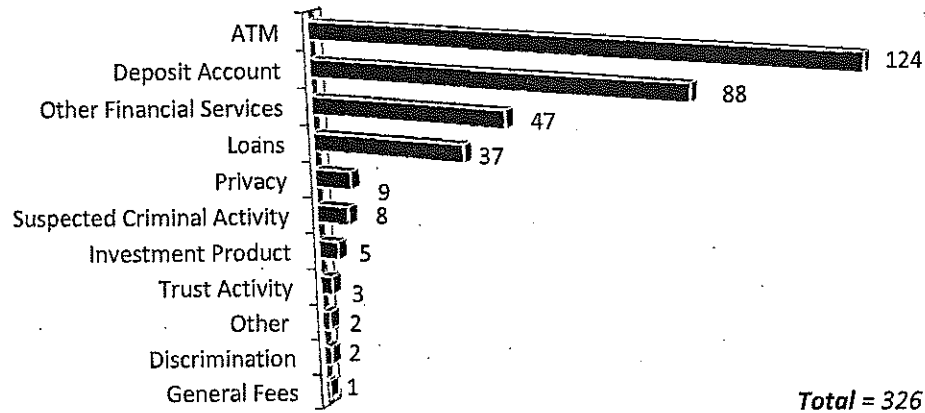
**Recoveries = \$29,654.03**  
**Total = 373**

**Inquiries on Regulated Entities  
September 2013 - April 2014**



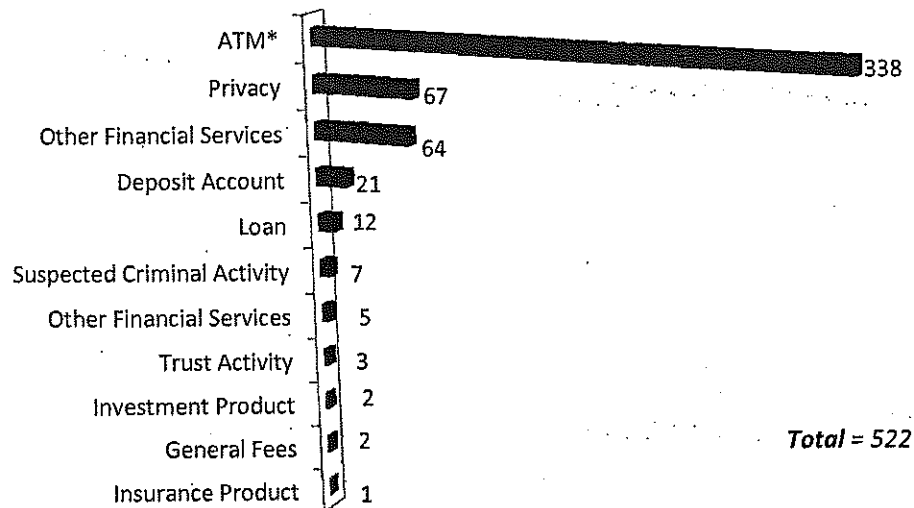
**Total = 540**

**State-Chartered Banks and Trust Companies**  
**Complaints by Type**  
**September 2013 - April 2014**



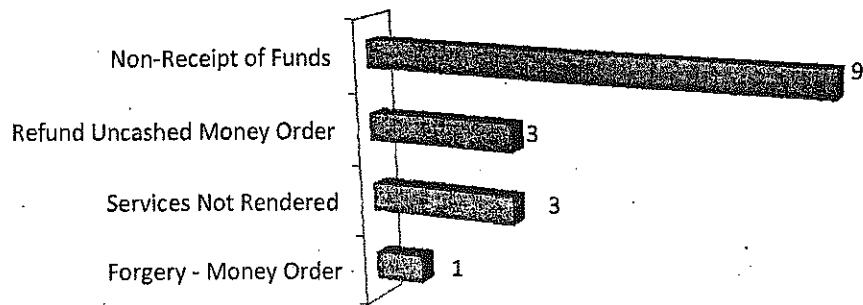
*\*High activity related to annual privacy notice containing the Department's contact information. Consumer complaints range from needing clarification of the notice to account balance issues and card related problems.*

**State-Chartered Banks and Trust Companies**  
**Inquiries by Type**  
**September 2013 - April 2014**



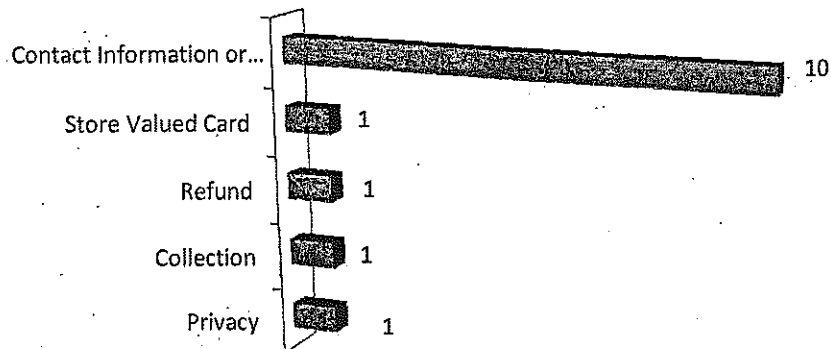
*\*High activity related to annual privacy notice containing the Department's contact information. Consumer complaints range from needing clarification of the notice to account balance issues and card related problems.*

**Money Services Businesses  
Complaints by Type  
September 2013 - April 2014**

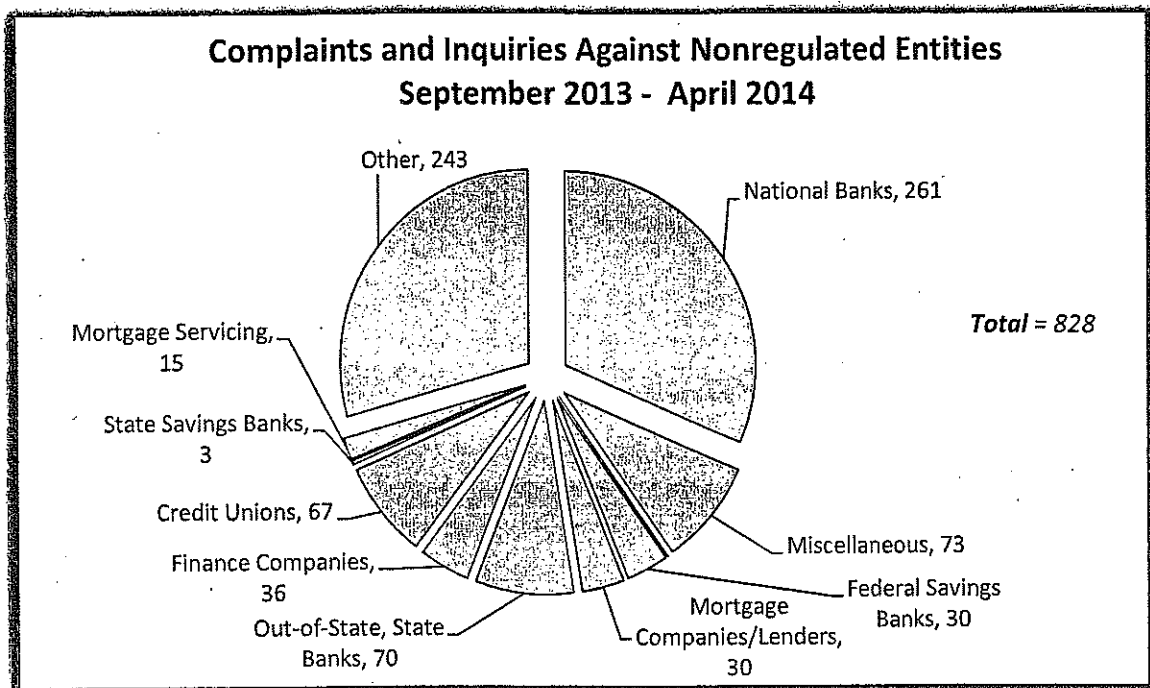


Total: 16

**Money Services Businesses  
Inquiries by Type  
September 2013 - April 2014**



Total: 14



Average Number of Days to Close a Complaint	
Type	Sept. 2013 – April 2014
State-Chartered Banks	7
Trust	N/A
PCSEA	8
PFC/PCC	37
MSB	45

CANS Activity March 1, 2008 – May 31, 2014		
Entity	Enrolled	Compromised Accounts Reported
Texas State-Chartered Banks	254	2,844
Texas State-Chartered Savings Banks	30	119
Federal Savings Banks	10	326
State Credit Unions	161	2,257
Federal Credit Unions	230	2,287
National Banks	165	1,317
Out-of-State State-Chartered Banks	11	3
Out-of-State National Banks	4	104
<b>Total</b>	<b>865</b>	<b>9,257</b>

**Bank Examination Testing System (BETS) Activity**

	FY 2011	FY 2012	FY 2013	FY 2014 As of 5/31/14
<b>Beginning Balance of FE3's</b>	28	27	20	16
<b>Number of Candidates Passing Each Phase</b>				
<b>I. General Knowledge</b>	10	6	3	4
<b>II. Loan Analysis</b>	3	5	8	0
<b>III. Panel</b>	5	4	10	2
<b>IV. Test Bank</b>	4	3	11	1
<b>Ending Balance of FE 3's</b>	27	20	16	14

<b>Promotions</b>				
<b>From FE3A to FE3B</b>	10	6	3	4
<b>From FE3B to FE4 (Commissioned Examiner)</b>	6	3	9	2

**Other Divisional Items:**

- The Department's 2013 Annual Report has been completed and is available on the website.
- The agency's Strategic Plan 2015-2019 has been completed (separate document). Each member of the Strategic Planning Task Force provided input on the draft and a conference call was held on May 19, 2014, to allow for additional feedback. As part of the process, the Department also completed its Customer Service Report, which is available on the agency's website.
- The Department launched its redesigned website on April 11, 2014. Between April 11, 2014 and May 31, 2014, there have been 79,463 page views of our new website. The top searches for the site have been related to virtual currency and employment opportunities.
- The Financial Literacy Coordinator hosted a financial literacy webinar on May 13, 2014. The webinar will focus on the new Texas children's savings account initiative by Economic Opportunity for Center of Public Policy Priorities. There were 282 registrants.
- FinCEN performed and completed an audit of the Department's query and download activity using the FinCEN portal between October and December of 2013. There were no audit findings and the Department is deemed in compliance.



Charles G. Cooper  
Commissioner

## **TEXAS DEPARTMENT OF BANKING**

2601 North Lamar Blvd., Austin, Texas 78705  
512-475-1300 / 877-276-5554  
[www.dob.texas.gov](http://www.dob.texas.gov)

### Memorandum

**TO:** Finance Commission Members  
**FROM:** Catherine Reyer, General Counsel  
**DATE:** June 2, 2014  
**RE:** Legal Division Update

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#### Litigation

*Antioch St. Johns Cemetery Co. v. The Texas Department of Banking Commissioner*, Cause No. D-1-GN-14-000367, In the 261st District Court of Travis County, Texas. Plaintiffs filed this case on February 6, 2014, appealing the Banking Commissioner's order requiring them to pay \$56,000 in administrative penalties for numerous violations of Health and Safety Code provisions governing cemeteries. The suit has been answered.

*State of Texas v. Myrtlewood Memorial Services d/b/a Harlingen-Combes Memorial Cemetery*, Cause No. 2013-DCL-2248-B, In the 138th Judicial District Court of Cameron County, Texas. This is a case initially filed to seek the appointment of a receiver. A hearing to determine whether the Department will be appointed receiver for the cemetery has been delayed pending the owner's attempt to sell the cemetery. We are now amending the petition to seek an injunction for the cemetery owner's violation of the Commissioner's previously issued cease and desist order.

*State of Texas v. House Savings Investment, LLC, et al*, Cause No. D-1-GV-13-000763, In the 353rd District Court of Travis County, Texas. On July 26, 2013, the district court issued a temporary restraining order and appointed a temporary receiver under the authority of Chapter 151, Texas Finance Code, to take control of two companies performing money services business activities (bi-monthly mortgage payments). An agreed permanent injunction and appointment of permanent receiver order was entered by the court on August 13, 2013. The Receiver closed the company offices in Houston and is continuing to administer the estate, investigate misappropriation of customer funds, prosecute litigation against third parties, and pursue and recover estate assets. There is no new activity in this case.

*Texas Department of Banking v. Greg Abbott, Attorney General of Texas*, Cause No. D-1-GV-11-001906, In the 53rd District Court of Travis County, Texas. This is an appeal from the Attorney General's letter ruling on a public information request. The Assistant Attorney General representing the Open Records Division and the Assistant Attorney General representing the Texas Department of Banking have filed motions for summary judgment.

### Contested Case Hearings

*Gonzalez Funeral Home, Gonzalez Family Funeral Home, LLC, Gonzalez-Rivera Funeral Home of Edinburg, LLC, Adan Gonzalez, Myrna Doris Gonzalez, Marc Anthony Gonzalez, and Aaron Rivera, Edinburg, Texas*, Docket No. BE-13-10-039. Respondents were accused of violations of the Texas Finance Code, Chapter 154, relating to the receipt of funds from the sale of preneed funeral benefits that were not deposited in trust or submitted to a licensed insurance company as insurance premiums. A hearing on restitution and penalties was held on August 7, 2013. The administrative law judge issued a final proposal for decision (PFD) on March 28, 2014. The Commissioner issued his order on May 22, 2014. The Commissioner ordered restitution of \$62,024 against Gonzalez Funeral Home, \$24,602 from Marc A. Gonzlez, \$23,306 from Adan N. Gonzalez, Jr., \$9,832 from Myrna Doris Gonzlez, and \$124 from Gonzalez Family Funeral Home, LLC. The Commissioner ordered penalties of \$48,000 against Gonzalez Funeral Home, \$29,000 against Marc A. Gonzalez, \$21,000 against Adan N. Gonzalez, Jr., \$6,000 against Myrna Doris Gonzalez, and \$500 against Gonzalez Family Funeral Home, LLC.

*In re The Palms Memorial Gardens, Inc. et al.*, Docket No. BE-14-12-189. The Commissioner previously issued cease and desist orders against The Palms Memorial Gardens, Inc. and The Palms Memorial Gardens Association, ordering them to cease operating a perpetual care cemetery without a certificate of authority. Both Respondents asked for a hearing; therefore the orders are not yet effective. The Department set those two orders for hearing, and noticed the Respondents for a hearing to impose penalties for violations of Chapter 712 of the Health and Safety Code and a previous agreed order. A hearing on the Department's motion for partial summary judgment is set for July 10, 2014.

*In re Pendergrass-People's Mortuary, Inc.*, Docket No. BCD-13-13-222. This holder of an expired prepaid funeral permit sought a hearing on the Commissioner's proposed order to seize its prepaid funeral records and funds. A hearing was held on October 21 and 31, 2013. A proposal for decision has been submitted, but the Department has asked the Commissioner to delay ruling until the Department has finished reviewing the respondent's application for a new permit. The respondent has now finalized his application. We anticipate issuing a permit by June 6, 2014. After the permit is issued we will move to dismiss the administrative hearing.

### Orders

Since the last meeting of the Finance Commission, the Commissioner issued seven orders. The Legal Division assisted with the following final public orders.

Order No. 2012-030a, dated 5/12/2014: Terminating Consent Order, First State Bank of Miami, Texas, Miami, TX

Order No. 2014-007, dated 5/29/2014; Order cancelling charter, First State Bank of Miami, Texas, Miami, TX

Order No. 2014-004, dated 4/1/2014; Order Approving Conversion from Trust-Funded PFB, Funeral Agency, Inc., San Saba, TX

Order No. 2014-005, dated 5/22/2014; Final Order, Gonzalez Family Funeral Home et al, Edinburg, TX

Order No. 2014-006, dated 5/29/2014; Consent Order, Bill.com, Inc., Palo Alto, CA

Order No. 2014-008, dated 6/2/2014; Order to Cease and Desist Activity, Dinar Corp, Inc., Carson City, Nevada, Carson City, NV

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2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §25.1, Concerning Prepaid Funeral Contract Forms - Definitions.

**PURPOSE:** The amendments to §25.1 are proposed for adoption to clarify that non-guaranteed cash advance items in a prepaid funeral benefits contract are those delivered or provided by a third party provider and to define "third party provider."

**RECOMMENDED ACTION:** No comments were received. The Department recommends that the Commission approve adoption of the amended rule in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we adopt amendments to 7 TAC §25.1 without changes to the proposal as previously published in the *Texas Register*.

***Title 7. Banking and Securities***  
***Part 2. Texas Department of Banking***  
***Chapter 25. Prepaid Funeral Contracts***  
***Subchapter A. Contract Forms***  
***7 TAC §25.1***

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §25.1, concerning Definitions without changes to the proposed text as published in the April 25, 2014 issue of the *Texas Register* (39 TexReg 3332).

These amendments clarify that non-guaranteed cash advance items in a prepaid funeral benefits contract are those delivered or provided by a third party provider. The amendments define "third party provider" as a legal entity with a different federal tax identification number from the funeral provider. If a question arises as to whether a certain entity is a third party provider, the department will require the funeral provider to provide evidence that the third party has a different tax identification number.

The basis for the rule is the existence of confusion as to who constitutes a third party for purposes of prepaid funeral benefits contracts.

In accordance with Texas Finance Code §154.1511(a), purchasers of prepaid funeral benefits may agree to advance funds for all or any portion of items called cash advance items, the actual cost of which will be determined by existing prices when the funeral benefits are provided. In the department's model prepaid funeral benefits contract, the purchaser is informed that the

provider of the funeral benefits pays for these cash advance items on behalf of the purchaser to third parties. Permit holders have differed in their interpretation of who constitutes a third party. For example, some permit holders take the position that a sister company owned by a common parent is not a third party, while other permit holders take the position that such a sister company is a third party. The department's proposed definition of "third party provider" clarifies this issue.

The department also proposed a non-substantive amendment to the definition of "funeral goods and services" in §25.1(b)(2). Section 25.1(b)(2) included a reference to §25.3(b) and omitted two words that were in the title of §25.3(b). Therefore, the department added "or Waiver" to make the reference to §25.3(b) conform to the title of that section.

There are two amendments to the definition of "non-guaranteed cash advance items" in §25.1(b)(8). The first change clarifies that a purchaser is buying prepaid funeral benefits, not a prepaid funeral benefits contract. The second change clarifies that non-guaranteed cash advance items are those provided by a third party provider. A definition of the term "third party provider" is added in the amendment as §25.1(b)(15).

The definition for "Third Party Provider" is added to §25.1(b) as paragraph (15) and the following paragraphs are renumbered accordingly. The added definition states that a third party provider is a separate legal entity from the funeral provider. The third party provider must have a separate federal tax identification number from the funeral

provider, but it may be related to the funeral provider through common ownership or as subsidiaries or affiliates of one another.

The Department received no comments regarding the proposed amendments.

The amendment is adopted pursuant to Finance Code, §154.051(b), which provides that the commission may adopt reasonable rules concerning the keeping and inspection of records relating to the sale of prepaid funeral benefits and any other matter relating to the enforcement and administration of Chapter 154. The amendment furthers one of the purposes of Chapter 154 as stated in Finance Code, §154.001 (1): to limit the manner in which a person may accept funds in prepayment of funeral services to be performed in the future.

### **§25.1. Definitions.**

(a) A word or term that is defined in Finance Code, Chapter 154, retains the same meaning when used in this subchapter unless the word or term is defined otherwise in subsection (b) of this section.

(b) The following words and terms have the following meanings when used in this subchapter, unless the context in which a word or term is used clearly indicates a different meaning that is consistent with the purpose of Finance Code, Chapter 154:

(1) "Contract beneficiary" means the person named in a prepaid funeral benefits contract as the intended recipient of contracted funeral merchandise and services.

(2) "Funeral goods and services" means funeral merchandise and services that are regulated as prepaid funeral benefits, as that term is defined by Finance Code, §154.002(9), except to the extent provided otherwise in §25.3(b) of this title (relating to What Requirements Apply to a Non-Model Contract or Waiver) and related provisions.

(3) "Funeral Provider" or "Provider" has the meaning assigned by Finance Code, §154.002(6), specifically a person that agrees in a prepaid funeral benefits contract to provide specified prepaid funeral benefits.

(4) "Insurance-funded contract" means a prepaid funeral benefits contract funded by an insurance policy.

(5) "Insurance policy" has the meaning assigned by Finance Code, §154.002(7), specifically a life insurance policy or an annuity contract. The term does not include a policy for any other form of insurance.

(6) "Model contract" means a prepaid funeral benefits contract form developed and published by the department for your use.

(7) "Model waiver" means the waiver form developed and published by the department for your use, to govern the voluntary waiver of a purchaser's right to cancel a prepaid funeral benefits contract as permitted by Finance Code, §154.156(a).

(8) "Non-guaranteed cash advance items" are items for which a purchaser of prepaid funeral benefits may agree to advance

## ADOPTION OF AMENDMENTS TO 7 TAC 25.1

Page 3 of 3

funds for all or any portion of the reasonable estimated cost of the items included in the prepaid funeral benefits contract, the actual cost of which are to be determined by existing prices at the time the items are delivered or provided by a Third Party Provider in connection with at-need performance of the contracted funeral.

(9) "Non-model contract" means a prepaid funeral benefits contract form that differs from the model contract with respect to the requirements and standards of §25.3 of this title and §25.4 of this title (relating to What Are the Plain Language Requirements for a Non-Model Contract or Waiver). A model contract does not become a non-model contract because you add your name, trademark, or other information about you, or information about the provider.

(10) "Non-model waiver" means a form of waiver that has the same purpose as but differs from the model waiver with respect to the requirements and standards of §25.2(c) of this title (relating to Am I Required to Use the Model Contract and Model Waiver) and §25.4 of this title. For example, a model waiver does not become a non-model waiver because you add your name, trademark, or other information about you, or information about the provider.

(11) "Prepaid funeral benefits contract" or "contract" means a contract or agreement for prepaid funeral benefits, whether trust-funded or insurance-funded.

(12) "Purchaser" means the person who contracts to buy prepaid funeral benefits.

The purchaser may also be the contract beneficiary. If permitted by the context, the term includes the purchaser's authorized agent.

(13) "Responsible person" means the person charged with the disposition of the contract beneficiary's remains by Health and Safety Code, §711.002(a).

(14) "Seller" has the meaning assigned by Finance Code, §154.002(10), specifically a person selling, accepting money or premiums for, or soliciting contracts for prepaid funeral benefits or contracts or insurance policies to fund prepaid funeral benefits in this state.

(15) "Third Party Provider" means a legal entity that is separate from the Funeral Provider and which will provide non-guaranteed cash advance items under a prepaid funeral benefits contract. Separate legal entities have different federal tax identification numbers but may be related by common ownership or be subsidiaries or affiliates of one another.

(16) "Trust-funded contract" means a prepaid funeral benefits contract funded by trust deposits made on behalf of the purchaser.

(17) "You" (or "I" in a section title) means a seller that is licensed under Finance Code, Chapter 154, and is subject to this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

3. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §15.4, Concerning Corporate Activities-Required Information and Abandoned Filings; 7 TAC §21.4, Concerning Trust Company Corporate Activities-Required Information and Abandoned Filings; and 7 TAC §33.13, Concerning How to Obtain a New Money Services Business License.

**PURPOSE:** Amendments to these sections are proposed to allow the Texas Banking Commissioner the discretion to grant an applicant additional time to complete a filing and to remove the more formal procedures for obtaining an extension that are currently in the rules.

**RECOMMENDED ACTION:** The Department recommends that the Commission approve publication of the proposed amendments in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we publish proposed amendments to 7 TAC §15.4; 7 TAC §21.4; and 7 TAC §33.13 in the *Texas Register*.

***Title 7. Banking and Securities  
Part 2. Texas Department of Banking  
Chapter 15. Corporate Activities  
Subchapter A. Fees and Other Provisions  
of General Applicability  
7 TAC §15.4***

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §15.4, concerning required information and abandoned filings. The amended rule is proposed to allow the Texas Banking Commissioner (commissioner) the discretion to grant an applicant additional time to complete a filing and to remove the more formal procedures for obtaining an extension that are currently in the rule. This will provide an opportunity for applicants to continue to provide information needed by the department to make a meaningful evaluation and determination in processing filings.

The department proposes deleting the current language in §15.4(c), which contains deadlines for an applicant to request more time to submit information in conjunction with an application and for the commissioner to act on such requests. The department proposes amending §15.4(c) to state simply that the commissioner has the discretion to grant an applicant additional time and that the commissioner will communicate his or her decision to the applicant before the expiration of the filing period.

Robert L. Bacon, Deputy Commissioner, Texas Department of Banking, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for state government or for local

government as a result of enforcing or administering the rule.

Mr. Bacon also has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule is that applicants who are diligently attempting to provide the information required in an application will have, if the commissioner deems it appropriate, additional time to gather and submit that information to the department. Additionally, the department's process for acting on such requests will be more efficient.

For each year of the first five years that the rule will be in effect, there will be no economic costs to persons required to comply with the rule as proposed. There will not be any anticipated costs to persons required to comply with the rule as proposed.

There will be no adverse economic effect on small businesses or micro-businesses. There will be no difference in the cost of compliance for small businesses as compared to large businesses.

To be considered, comments on the proposed amendment must be submitted no later than 5:00 p.m. on August 4, 2014. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to [legal@dob.texas.gov](mailto:legal@dob.texas.gov).

The amendment is proposed under Finance Code, § 31.003, which authorizes the

Finance Commission to adopt rules to accomplish the purposes of Subtitle A, the Texas Banking Act, including rules to implement Subtitle A, and other provisions of general applicability to banks.

All sections of Subtitle A of the Finance Code that provide for filings to be made to the department are affected by the proposed amended section, including §§ 31.005, 32.003, 32.101, 32.103, 32.202, 32.203, 32.302, 32.401, 32.405, 32.502, 33.002, 34.102, 34.103, 35.0071, 202.001, 202.004, 204.101 and 204.201.

#### **§15.4. Required Information and Abandoned Filings.**

(a) Required information. The banking commissioner may investigate and evaluate facts related to a submitted filing or accepted filing to the extent necessary to reach an informed decision. The banking commissioner may require any person or entity connected with the matter, to which the submitted or accepted filing pertains to submit additional information, including, but not limited to, an opinion of counsel with respect to a matter of law or an opinion, review or compilation prepared by a certified public accountant.

(b) On or before the 15th day after initial submission of an application, the banking commissioner shall issue a written notice informing the applicant either that all filing fees have been paid and the application is complete and accepted for filing, or that the application is deficient and specific additional information is required.

(c) Time limit for providing required information. An applicant must provide all information necessary for the banking commissioner to declare that a submission is an accepted filing, whether the information is required by form or rule or is requested by the department. The information must be provided to the department on or before the 61st day after the date of initial submission of the filing, except as otherwise provided by law. At his sole discretion, the banking commissioner may grant an applicant additional time to complete the application. Extensions will be communicated to the applicant before the expiration of the filing period. ~~[A person or entity may request an automatic 30-day extension of time to submit required information if the request is in writing and is received by the department prior to the end of the initial 60-day period provided for in this subsection. An additional extension may be requested in writing if such request is received prior to the expiration of the automatic extension. The additional extension shall be granted only if there is a finding of good and sufficient cause, in the banking commissioner's discretion, to grant an extension. Notice of the decision of the banking commissioner shall be mailed to the person or entity seeking the extension within ten days of the receipt of the request by the department.]~~

(d) Abandoned filing. The banking commissioner may determine any submitted or accepted filing to be abandoned, without prejudice to the right to refile, if the information required by the Finance Code, this chapter, or any rule or regulation adopted pursuant to the Finance Code, or additional

requested information, is not furnished within the time period specified by subsection (c) of this section or as requested by the banking commissioner in writing to the person or entity making the submission. The banking commissioner may determine a submitted or accepted filing for which fees required by the Finance Code or by this chapter are not paid within 30 days of receipt of the initial submission to be abandoned.

(e) Notice. The banking commissioner shall give written notice of any submitted or accepted filing considered to be abandoned. Notice of abandonment shall be effective upon mailing by the department. Fees paid related to an abandoned filing are nonrefundable.

*Title 7. Banking and Securities*  
*Part 2. Texas Department of Banking*  
*Chapter 21. Trust Company Corporate*  
*Activities*  
*Subchapter A. Fees and Other Provisions*  
*of General Applicability*  
*7 TAC §21.4*

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §21.4, concerning required information and abandoned filings. The amended rule is proposed to allow the Texas Banking Commissioner (commissioner) the discretion to grant an applicant additional time to complete a filing. This will provide an opportunity for applicants to continue to provide information needed by the department to make a meaningful evaluation and determination in processing the application.

The department proposes deleting the current language in §21.4(c), which contains deadlines for an applicant to request more time to submit information in conjunction with an application and for the commissioner to act on such requests. The department proposes amending §21.4(c) to state simply that the commissioner has the discretion to grant an applicant additional time and that the commissioner will communicate his or her decision to the applicant before the expiration of the filing period.

Robert L. Bacon, Deputy Commissioner, Texas Department of Banking, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for state government or for local

government as a result of enforcing or administering the rule.

Mr. Bacon also has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule is that applicants who are diligently attempting to provide the information required in an application will have, if the commissioner deems it appropriate, additional time to gather and submit that information to the department. Additionally, the department's process for acting on such requests will be more efficient.

For each year of the first five years that the rule will be in effect, there will be no economic costs to persons required to comply with the rule as proposed. There will not be any anticipated costs to persons required to comply with the rule as proposed.

There will be no adverse economic effect on small businesses or micro-businesses. There will be no difference in the cost of compliance for small businesses as compared to large businesses.

To be considered, comments on the proposed amendment must be submitted no later than 5:00 p.m. on August 4, 2014. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to [legal@dob.texas.gov](mailto:legal@dob.texas.gov).

The amendment is proposed under Finance Code, §181.003, which authorizes the

Finance Commission to adopt rules to accomplish the purposes of Subtitle F, the Texas Trust Company Act, including rules to implement Subtitle F.

All sections of Subtitle F of the Finance Code that provide for filings to be made to the department are affected by the proposed amended section, including §§ 181.004, 182.003, 182.011, 182.012, 182.013, 182.101, 182.103, 182.202, 182.203, 182.302, 182.401, 182.405, 182.502, 183.001, 183.002, 184.102, 184.103, 184.301, 184.302, and 185.0071.

#### **§21.4. Required Information and Abandoned Filings.**

(a) Required information. The banking commissioner may investigate and evaluate facts related to a submitted filing or accepted filing to the extent necessary to reach an informed decision. The banking commissioner may require any person or entity connected with the matter to which the submitted or accepted filing pertains to submit additional information, including, but not limited to, an opinion of counsel with respect to a matter of law or an opinion, review or compilation prepared by a certified public accountant.

(b) Accepted for filing. On or before the 15th day after initial submission of an application, the banking commissioner shall issue a written notice informing the applicant either that all filing fees have been paid and the application is complete and accepted for filing, or that the application is deficient and specific additional information is required.

(c) Time limit for providing required information. Unless otherwise provided for in the Trust Company Act, this chapter or rules and regulations adopted pursuant to the Trust Company Act, all required information necessary for the banking commissioner to declare that a submission is an accepted filing shall be provided to the department on or before the 61st day after the date of the initial submission of the filing. At his sole discretion, the banking commissioner may grant an applicant additional time to complete the application. Extensions will be communicated to the applicant before the expiration of the filing period. ~~[A person or entity may request an automatic 30-day extension of time to submit required information if the request is in writing and is received by the department prior to the end of the initial 60-day period provided for in this subsection. An additional extension may be requested in writing if such request is received prior to the expiration of the automatic extension. The additional extension shall be granted only if there is a finding of good and sufficient cause, in the banking commissioner's discretion, to grant an extension. Notice of the decision of the banking commissioner shall be mailed to the person or entity seeking the extension within ten days of the receipt of the request by the department.]~~

(d) Abandoned filing. The banking commissioner may determine any submitted or accepted filing to be abandoned, without prejudice to the right to refile, if the information required by the Trust Company Act, this chapter, or any rule or regulation adopted pursuant to the Trust Company Act, or additional requested information, is not

furnished within the time period specified by subsection (c) of this section or as requested by the banking commissioner in writing to the person or entity making the submission. The banking commissioner may determine a submitted or accepted filing for which fees required by the Trust Company Act or by this chapter are not paid within 30 days of receipt of the initial submission to be abandoned.

(e) Notice. The banking commissioner shall give written notice of any submitted or accepted filing considered to be abandoned. Notice of abandonment shall be effective upon mailing by the department. Fees paid related to an abandoned filing are nonrefundable.

***Title 7. Banking and Securities  
Part 2. Texas Department of Banking  
Chapter 33. Money Services Businesses  
7 TAC §33.13***

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §33.13, concerning the process for obtaining a money services business license. The amended rule is proposed to allow the Texas Banking Commissioner (commissioner) the discretion to grant an applicant additional time to complete a filing and to remove the more formal procedures for obtaining an extension that are currently in the rule. This will provide an opportunity for applicants to continue to provide information needed by the department to make a meaningful evaluation and determination in processing the application.

The department proposes a non-substantive amendment to §33.13(d)(2), which is to clarify a reference to §33.13(d)(1) by adding the words "of this subsection."

The department proposes deleting the current language in §33.13(f)(2) and all of current §33.13(f)(3), which contain deadlines for an applicant to request more time to submit information in conjunction with an application and for the commissioner to act on such requests. The department proposes amending §33.13(f)(2) to state simply that the commissioner has the discretion to grant an applicant additional time and that the commissioner will communicate his or her decision to the applicant before the expiration of the filing period. The following paragraph is renumbered accordingly.

Stephanie Newberg, Deputy Commissioner, Texas Department of Banking, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Ms. Newberg also has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule is that applicants who are diligently attempting to provide the information required in an application will have, if the commissioner deems it appropriate, additional time to gather and submit that information to the department. Additionally, the department's process for acting on such requests will be more efficient.

For each year of the first five years that the rule will be in effect, there will be no economic costs to persons required to comply with the rule as proposed. There will not be any anticipated costs to persons required to comply with the rule as proposed.

There will be no adverse economic effect on small businesses or micro-businesses. There will be no difference in the cost of compliance for small businesses as compared to large businesses.

To be considered, comments on the proposed amendment must be submitted no later than 5:00 p.m. on August 4, 2014. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments

may also be submitted by email to legal@dob.texas.gov.

The amendment is proposed under Finance Code, §151.102, which authorizes the Finance Commission to adopt rules to implement Finance Code, Chapter 151 regarding money service businesses.

Finance Code, §151.203 and §151.204, are affected by the proposed amended section.

**§33.13. How Do I Obtain a New License?**

(a) Does this section apply to me? This section applies if you seek a new money transmission or currency exchange license under Finance Code, Chapter 151.

(b) What must I do to apply for a license? To apply for a new money transmission or currency exchange license, you must:

(1) submit an application on the form prescribed by the department; and

(2) fully complete the application form and provide the information and documentation as specified in the application and the department's instructions.

(c) What does the application process generally involve? The banking commissioner will review your application and, as authorized by Finance Code, Chapter 151, investigate you, your principals including officers, directors and shareholders of a publically traded parent if the principal has 25% or more ownership of the applicant, and all related facts to determine if you possess the

qualifications and satisfy the requirements for the license for which you apply. At any time during the review and investigation process, the commissioner may require such information as the commissioner considers necessary to evaluate your application, including an opinion of counsel or an opinion, review or compilation prepared by a certified public accountant. It is your responsibility to provide or cause to be provided all the information the commissioner requires.

(d) What is required for the department to begin processing my application?

(1) Your application must provide and be accompanied by the following at the time you submit the application to the department:

(A) your signature or the signature of your duly authorized officer, as applicable, sworn to before a notary, affirming that the information in the application and accompanying documentation is true;

(B) an application fee, in the amount established by commission rule, in the form of a check payable to the Texas Department of Banking;

(C) all required search firm reports; and

(D) if you are applying for a money transmission license:

(i) security in the amount of at least \$300,000 that complies with Finance Code, §151.308, and an undertaking to increase the amount of the security if

additional security is required under that section; and

(ii) an audited financial statement demonstrating that you satisfy the minimum net worth requirement established by Finance Code, §151.307(a), and that, if the license is issued, you are likely to maintain the required minimum; or

(E) if you are applying for a currency exchange license:

(i) security in the amount of \$2,500 that complies with Finance Code, §151.308; and

(ii) a financial statement demonstrating your solvency.

(2) The department may refuse to process and may return to you an application submitted without all the items identified in paragraph (1) of this subsection. If you submit your application fee, but fail to include one or more of the other items identified in paragraph (1) of this subsection, the department will return or refund the fee or, if you promptly submit an application that includes the missing items, apply the fee to your subsequent application.

(e) When will the department tell me if my application is complete and accepted for filing? On or before the 15th day after the date the department receives your application, and if the application is not returned as provided for in subsection (d)(2) of this section, the department will notify you in writing that:

(1) your application is incomplete and the additional information specified in the notice is required before the department will accept your application for filing; or

(2) your application is complete and accepted for filing.

(f) When must I provide the additional information the department requires to consider my application complete and to accept it for filing?

(1) Subject to paragraph [paragraphs] (2)[, (3) and (4)] of this subsection, the department must receive all information required to consider your application complete and to accept it for filing on or before the 61st day after the date the department receives your initial application.

(2) At his sole discretion, the banking commissioner may grant an applicant additional time to complete the application. Extensions will be communicated to the applicant before the expiration of the filing period. [The banking commissioner may give you a 30-day extension to submit the required information if the department receives a written extension request from you before the expiration of the initial 60-day period.]

~~[(3) Upon a finding of good cause, the banking commissioner may give you an additional extension if the department receives a written request from you before the expiration of the 30-day period authorized in paragraph (2) of this subsection. Your request must explain in detail the reasons you need the additional extension. The commissioner will~~

~~notify you of the decision by letter mailed to you on or before the 10th day after the date the department receives your request.]~~

(3) [(4)] After reviewing the information you provide in response to the department's initial request for additional information, the department may determine that still more information is required to consider your application complete and to accept it for filing. The department will notify you in writing if further information is required and specify the date by which the department must receive the information.

(g) What happens if I do not provide the required information?

(1) The banking commissioner may determine that your application is abandoned, without prejudice to your right to file a new application, if the department does not receive the information required in the application and department's instructions or the additional information required by the department within the time specified in subsection (f) of this section or as otherwise requested by the commissioner in writing to you.

(2) The banking commissioner will notify you in writing if your application is considered abandoned. The commissioner's determination is effective the date the department mails you the notice and may not be appealed. The department will not refund the fee you paid in connection with the abandoned application.

(h) After the department accepts my application for filing, when will I know if the

application is approved? On or before the 45th day after the date the department accepts your application for filing, the banking commissioner will approve or deny your application and advise you in writing of the decision.

(i) May I appeal the denial of my application? Yes. If the banking commissioner denies your application, you may appeal the denial in accordance with Finance Code, §151.205(b).

(j) What if the department does not comply with the application processing times? If the department fails to comply with the application processing times specified in subsections (e) or (h) of this section, you may file a complaint under §33.15 of this title (relating to Failure to Comply with Application Processing Times).

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4. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §33.27, Concerning Fees to Get and Maintain a Money Services Business License.

**PURPOSE:** Amendments to §33.27 are proposed to increase revenue from assessments to better match the cost of administering and enforcing the Money Services Act. Assessment rates have not increased since 2006. The proposed amendments will replace the fee assessment schedule in subsection (h)(1), currently applicable to all licensed money services businesses, with two revised schedules in proposed subsection (e), one applicable to money transmission licensees and one applicable to currency exchange licensees. In addition, the annual license fee required by Finance Code §154.207, currently set forth in existing subsection (e), is proposed to be included in the assessment fee rather than separately charged and collected.

**RECOMMENDED ACTION:** The Department recommends that the Commission approve publication of the proposed amendments in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we publish proposed amendments to 7 TAC §33.27 in the *Texas Register*.

***Title 7. Banking and Securities  
Part 2. Texas Department of Banking  
Chapter 33. Money Services Businesses  
7 TAC §33.27***

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §33.27, concerning what fees must be paid to get and maintain a license.

The proposed amendments to §33.27 will replace the fee assessment schedule in subsection (h)(1), currently applicable to all licensed money services businesses, with two revised schedules in proposed subsection (e), one applicable to money transmission licensees and one applicable to currency exchange licensees. In addition, the annual license fee required by Finance Code §154.207, currently set forth in existing subsection (e), is proposed to be included in the assessment fee rather than separately charged and collected. Other proposed changes are for conforming purposes or to improve organization of §33.27.

Pursuant to Finance Code §16.003, the department is charged with responsibility for all direct and indirect costs of its existence and operation, and may not directly or indirectly cause the general revenue fund to incur any of such costs. Under Finance Code §151.102(a)(5), the commission may adopt rules as necessary or appropriate to recover the cost of administering and enforcing the Money Services Act and other applicable law by imposing and collecting proportionate and equitable fees for notices, applications, examinations, investigations,

and other actions required to achieve the purposes of the Money Services Act.

Most regulatory programs administered by the department are supported by similar language, requiring each regulated industry to pay its proportionate share of the cost of regulation. The purpose of a fee charged by the department, whether the fee is for an application, an examination, or another purpose, is to enable the department to be self-supporting and each regulatory program to be self-sustaining. The department therefore must periodically evaluate its operations to determine whether the department's fee structure equitably allocates the cost of regulation as required by statute.

A key regulatory function for which the cost of operations is no longer adequately funded by existing fees is the required periodic examination of each licensed money services business. Proposed amendments to §33.27 will increase the amount of the assessment paid by most money service businesses, and these adjustments are long overdue. The assessment has not been increased in eight years, *see* the August 25, 2006, issue of the *Texas Register* (31 TexReg 6643).

The proposed fee increases are necessary because revenue from assessments has not kept pace with the department's operational costs, which have increased over the years due to inflation, the need to attract, hire and retain qualified personnel, and the additional time, resources and attention required by the increasing complexity of money services business operations. The department believes that the proposed fee

adjustments will provide the funding required to administer and enforce the Money Services Act and do so in a manner that is fair and equitable to all license holders.

Stephanie Newberg, Deputy Commissioner, Texas Department of Banking, has determined that for the first five-year period the proposed amended rule is in effect, there will be fiscal implications for state government (but not for local government) as a result of enforcing or administering the rule. Ms. Newberg estimates that the proposed assessment fee adjustments to §33.27 will generate an additional \$177,738 in revenue for each year of the first five-year period the proposed rule is in effect.

Ms. Newberg also has determined that, for each year of the first five years the amended rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule is better matching of the actual cost of regulation with the service provided, for the purpose of achieving economic self-sufficiency for administration and enforcement of the Money Services Act within the department.

For each year of the first five years that the amended section will be in effect, there will be economic costs to persons required to comply with the amended section as proposed. There will be an adverse economic effect on small businesses and micro-businesses, although the proposal has been modified to reduce the effect as described further in the following paragraphs. There will be a difference in the

cost of compliance for small businesses as compared to large businesses.

There were 127 money services business licensees that paid assessment fees during the fiscal year ended August 31, 2013. Of these 127 licensees, 91 are small businesses and 64 of those small businesses are also micro-businesses, as those terms are defined in Government Code, §2006.001. However, two licenses are available under the Money Services Act, a license for money transmission or a license for currency exchange. Because each of the 38 licensees engaged solely in currency exchange activities is a micro-business, as that term is defined in Government Code, §2006.001, and because examining a currency exchange licensee is substantially less complex than examining a money transmission licensee, the proposed increase in assessments for a currency exchange licensee is substantially less than the proposed increase for a money transmission licensee.

Based on the department's analysis, a currency exchange licensee will on average pay \$579 more in fees for each year of the first five years the proposed rule is in effect, net of the \$500 in annual savings to be realized from repeal of the annual license fee. Each of the 26 money transmission licensees that is a micro-business will on average pay \$1,032 more in fees for each year of the first five years the proposed rule is in effect, net of the \$1,500 in annual savings to be realized from repeal of the annual license fee. The average annual increase in fees will be \$1,527 for each of the 27 money transmission licensees that is a small business and not also a micro-business, and \$2,435 for each of the 36

money transmission licensees that is a large business, in each case net of the \$1,500 in annual savings to be realized from repeal of the annual license fee.

Consistent with established practice, the department provided each licensee under the Money Services Act with a draft of the proposed rule and invited informal comments. No comments were submitted. The department believes that the proposed assessment fee structure best satisfies the mandate of Finance Code §151.102(a)(5) that fees be proportionate and equitable, and provide for recovery of the department's costs related to administering and enforcing the Money Services Act.

To be considered, comments on the proposed section must be submitted no later than 5:00 p.m. on August 4, 2014. Comments should be addressed to General Counsel, Legal Division, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to [legal@dob.texas.gov](mailto:legal@dob.texas.gov).

The amendment of §33.27 is proposed under Finance Code, §151.102(a), specifically §151.102(a)(5), which authorizes the commission to adopt rules necessary or appropriate to recover the cost of maintaining and operating the department and the cost of administering and enforcing Finance Code, Chapter 151, and other applicable law by imposing and collecting proportionate and equitable fees and costs for notices, applications, examinations, investigations, and other actions required to achieve the purposes of Chapter 151.

Finance Code, §151.207 and §151.601, are affected by the proposed amended section.

***§33.27. What Fees Must I Pay to Get and Maintain a License?***

(a) (No change.)

(b) Definitions.

(1) "Annual Assessment"--the fee assessed annually to pay the costs incurred by the department to examine a license holder and administer Finance Code, Chapter 151, including the annual license fee required by Finance Code, §151.207(b)(1).

(2) (No change.)

(c) - (d) (No change.)

(e) What fees must I pay to maintain my license? You must pay your annual assessment. Subject to paragraph (3) of this subsection, the amount of your annual assessment is determined based on the total annual dollar amount of your Texas money transmission and or currency exchange transactions, as applicable, as reflected on your most recent annual report filed with the department under Finance Code, §151.207(b)(2).

(1) If you hold a currency exchange license, you must pay the annual assessment specified in the following table:  
[an annual license fee of \$500.]

Figure: 7 TAC §33.27(e)(1)

(2) If you hold a money transmission license, you must pay the annual assessment specified in the following table: [an annual license fee of \$1,500.]

Figure: 7 TAC §33.27(e)(2)

(3) If you are a new license holder and have not yet filed your first annual report under Finance Code, §151.207(b)(2), you must pay the minimum annual assessment specified by paragraph (1) or (2) of this subsection, as applicable, prorated for the number of quarters remaining in the department's fiscal year after the date your license is issued.

(f) - (g) (No change.)

(h) What other fees must I pay ~~[for an examination]~~?

(1) If the department does not receive your completed annual report on or before the due date prescribed by the commissioner under Finance Code, §151.207, you must pay a late fee of \$100 per day for each business day after the due date that the department does not receive your completed annual report. [You must pay an annually assessed examination fee (annual assessment). The amount of the fee is based on the total annual dollar amount of your Texas money transmission and or currency exchange transactions, as applicable, as reflected on the most recent annual report you have filed with the department. You must pay the annual assessment specified in the following table:]

[Figure: 7 TAC §33.27(h)(1)]

(2) (No change.)

(3) If you are a new license holder and have not yet filed your first annual report required under Finance Code, §151.207(b)(2), you must pay an examination fee of \$75 per hour for each examiner and all associated travel expenses for an examination. The portion of this fee attributable to hourly charges shall be reduced by an amount equal to 50% of the annual assessment you paid pursuant to subsection (e)(3) of this section, but not below zero. [Your subsequent annual assessments will be calculated in accordance with paragraph (1) of this subsection.]

(4) - (5) (No change.)

(i) How and when do I need to pay for the fees required by this section?

(1) - (2) (No change.)

(3) Your annual assessment [You must pay the annual license fee] required under subsection (e) of this section may be billed in quarterly or fewer installments in such periodically adjusted amounts as reasonably necessary to pay for the costs of examination and to administer Finance Code, Chapter 151. You must pay the annual assessment fee by ACH debit, or by another method if directed to do so by the department. At least 15 days prior to the scheduled ACH transfer, the department will send you a notice specifying the amount of the payment due and the date the department will initiate payment by ACH debit. The commissioner may decrease your annual assessment if it is determined that a lesser amount than would otherwise be collected is

~~necessary to administer the Act [at the time you file your completed annual report. Additionally:]~~

~~[(A) You must pay the fee by ACH debit, or by another method if directed to do so by the department. At least 15 days prior to the scheduled ACH transfer, the department will send you a notice specifying the amount of the fee and the date the department will initiate payment of the fee by ACH debit; and]~~

~~[(B) if the department does not receive both your completed annual report and license fee by the specified deadline, you must pay a late fee of \$100 per day for each business day after the deadline that the department does not receive your completed annual report and license fee. You must pay this fee immediately upon receipt of the department's written invoice].~~

(4) - (5) (No change.)

(6) If you owe a late fee as provided by subsection (h)(1) of this section, you must pay this fee immediately upon receipt of the department's written invoice.  
~~[Your annual assessment required under subsection (h)(1) of this section may be billed in quarterly or fewer installments in such periodically adjusted amounts as reasonably necessary to pay for the costs of examination and to administer Finance Code, Chapter 151. You must pay the annual assessment fee by ACH debit, or by another method if directed to do so by the department. At least 15 days prior to the scheduled ACH transfer, the department will send you a notice specifying the amount of the payment due and the date the department~~

~~will initiate payment by ACH debit. The commissioner may decrease your annual assessment if it is determined that a lesser amount than would otherwise be collected is necessary to administer the Act.]~~

(7) - (8) (No change.)

(j) (No change.)

Figure: 7 TAC §33.27(e)(1)

**Annual Assessment Fee Schedule for CEX License Holders:**

If your total number of annual transactions is:		Then your annual assessment is:
Over --	But not over --	
-----	\$249,999.99	\$2,750.00
\$250,000.00	\$499,999.99	\$2,750.00 plus the amount of your transactions over \$250,000 multiplied by a factor of .00235
\$500,000.00	\$999,999.99	\$3,350.00 plus the amount of your transactions over \$500,000 multiplied by a factor of .00175
\$1,000,000.00	\$9,999,999.99	\$4,250.00 plus the amount of your transactions over \$1 million multiplied by a factor of .000115
\$10,000,000.00	\$24,999,999.99	\$5,250.00 plus the amount of your transactions over \$10 million multiplied by a factor of .0000835
\$25,000,000.00	\$49,999,999.99	\$6,250.00 plus the amount of your transactions over \$25 million multiplied by a factor of .0000735
\$50,000,000.00	\$199,999,999.99	\$7,950.00 plus the amount of your transactions over \$50 million multiplied by a factor of .00001155
\$200,000,000.00	-----	\$9,150.00 plus the amount of your transactions over \$200 million multiplied by a factor of .00001125, but not more than \$21,250.00.

If the calculation result is greater than \$21,250, your annual assessment is \$21,250.

Figure: 7 TAC §33.27(e)(2)

**Annual Assessment Fee Schedule for MT License Holders:**

If your total number of annual transactions is:		Then your annual assessment is:
Over --	But not over --	
-----	\$249,999.99	\$3,950.00
\$250,000.00	\$499,999.99	\$3,950.00 plus the amount of your transactions over \$250,000 multiplied by a factor of .00235
\$500,000.00	\$999,999.99	\$4,550.00 plus the amount of your transactions over \$500,000 multiplied by a factor of .00175
\$1,000,000.00	\$9,999,999.99	\$5,450.00 plus the amount of your transactions over \$1 million multiplied by a factor of .000115
\$10,000,000.00	\$24,999,999.99	\$6,450.00 plus the amount of your transactions over \$10 million multiplied by a factor of .0000835
\$25,000,000.00	\$49,999,999.99	\$7,700.00 plus the amount of your transactions over \$25 million multiplied by a factor of .0000735
\$50,000,000.00	\$199,999,999.99	\$9,450.00 plus the amount of your transactions over \$50 million multiplied by a factor of .00001155
\$200,000,000.00	-----	\$11,100.00 plus the amount of your transactions over \$200 million multiplied by a factor of .00001125, but not more than \$21,250.00.

If the calculation result is greater than \$21,250, your annual assessment is \$21,250.

**C.**

**Texas Department of Savings and  
Mortgage Lending**

**Industry**

**and**

**Departmental Operations**

**and**

**Legislative Activities**

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## C. Texas Department of Savings and Mortgage Lending

### 1. Industry Status and Departmental Operations – State Savings Bank Activity:

#### a. Industry Status

State-chartered thrift assets under the Department's jurisdiction totaled \$10.4 billion as of March 31, 2014, which is 5% greater than the asset size of the industry one year prior. The total number of state savings banks ("SSBs") remains 30 after the conversion of a federal thrift to a state charter and the merger out of a SSB into a national charter.

Nonperforming assets in state-chartered thrifts decreased to its lowest level in more than eight years at 0.70% of total assets or 6.19% of equity capital plus loan loss reserves (excluding one institution that is active in acquiring discounted performing and nonperforming assets in the secondary market). While past due and nonaccrual loans, and foreclosed real estate have improved to below pre-recession levels, these risks continue to be monitored closely by state and federal regulators.

The annualized return on average assets for thrifts in the first quarter of calendar year 2014 was 1.93%, which is down from recent quarters, but similar to one year prior. Increased profitability occurred in 33% of savings banks in comparison to one year prior. The percentage of unprofitable thrifts increased slightly to 13%. The industry's net interest margin continues to contract as a result of declining yields on commercial loans, commercial real estate loans, and consumer loans.

State thrift capital levels are strong and increasing as represented by an aggregate 17.73% Tier 1 Leverage Ratio. Quarterly growth in equity came through \$50 million in net income, \$6.1 million in unrealized gains on investments, \$4 million in parent company injections, and \$1 million in stock sales, offset slightly by \$4.8 million in dividends.

Composite CAMELS ratings among thrifts have not materially changed since the last report to the Finance Commission. The total number of 1 or 2 rated state savings banks remains 28, or 93% of the industry.

#### b. Savings Bank Charter and Merger Activity

On March 21, 2014, an application was filed by Pioneer Bancshares, Inc., Dripping Springs, and its subsidiary Pioneer Bank, SSB, to acquire C Bar M, Inc., Kerrville, and its subsidiary Union State Bank. The application was approved and the transaction consummated on May 30, 2014.

#### c. Wholesale Savings & Loan Charter and Merger Activity

On May 9, 2014, an application was received for a de novo wholesale savings and loan charter to be named Royal United Savings and Loan Association. The application is currently under review.

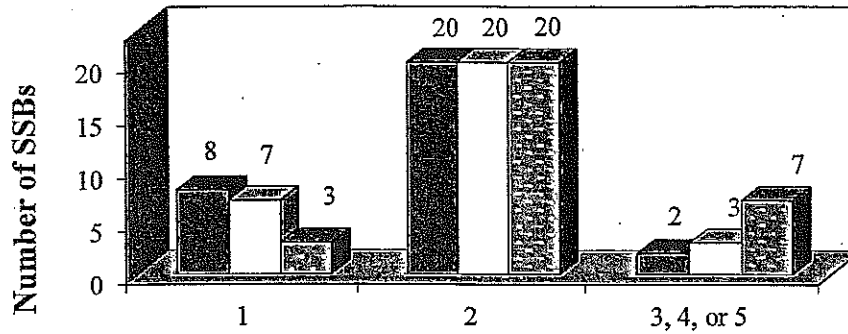
#### d. Recap of Problem Institutions/Enforcement Issues

There have been no changes in the number of problem institutions since the previous Finance Commission meeting. Two state savings banks are currently rated a composite 3 or 4. There are no 5 rated state savings banks. In addition to normal supervisory activities, the progress of any "problem institution" is monitored through more frequent onsite visits and examinations, and offsite review of compliance with enforcement actions. The use of a Supervisory Agent is also routinely employed when deemed necessary.

#### e. Other Issues

None

### SSB CAMELS RATINGS



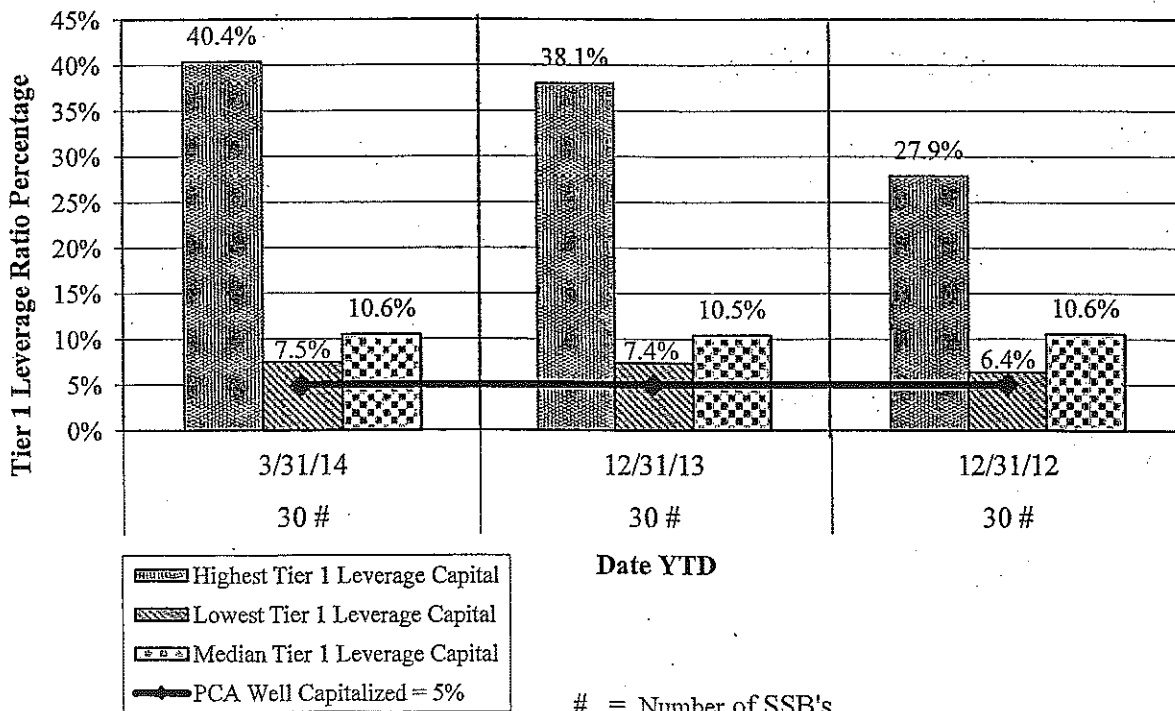
### CAMELS COMPOSITE RATINGS

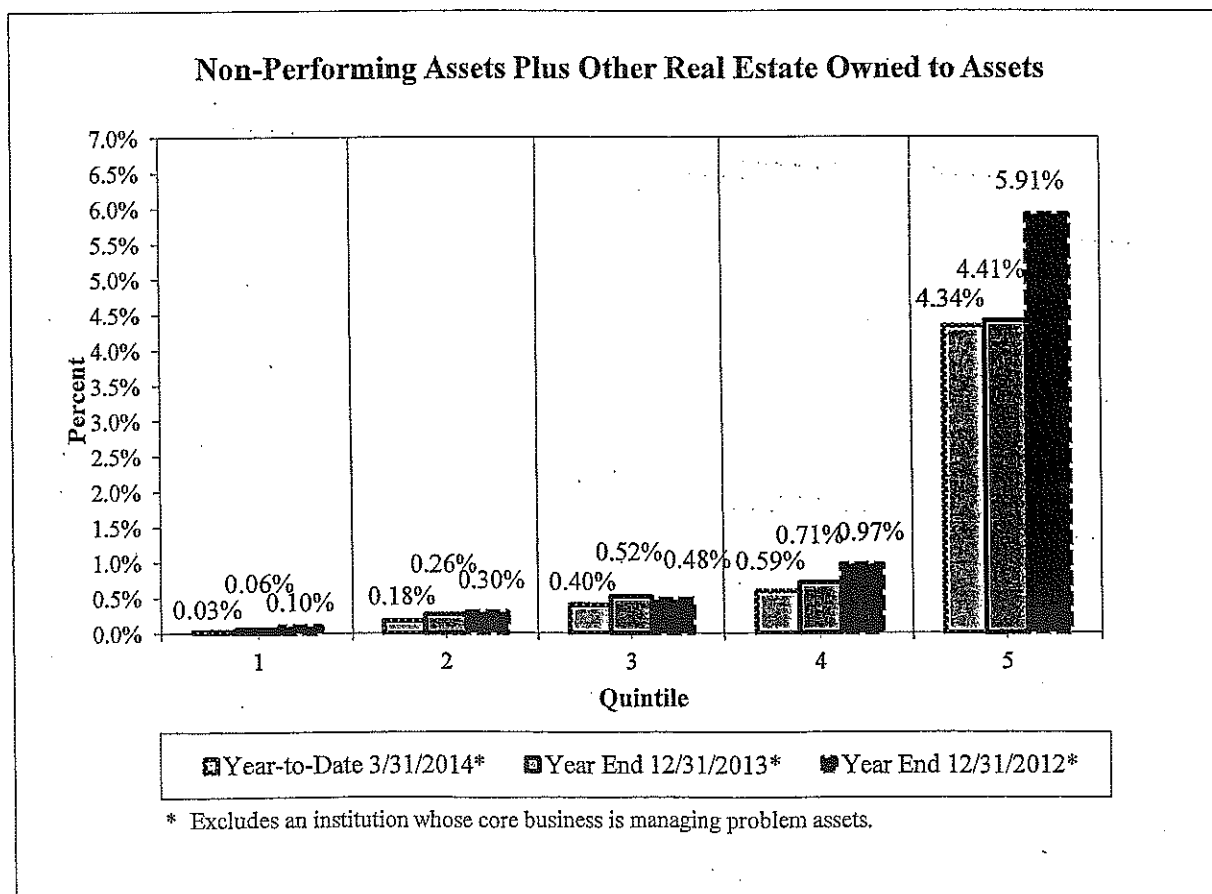
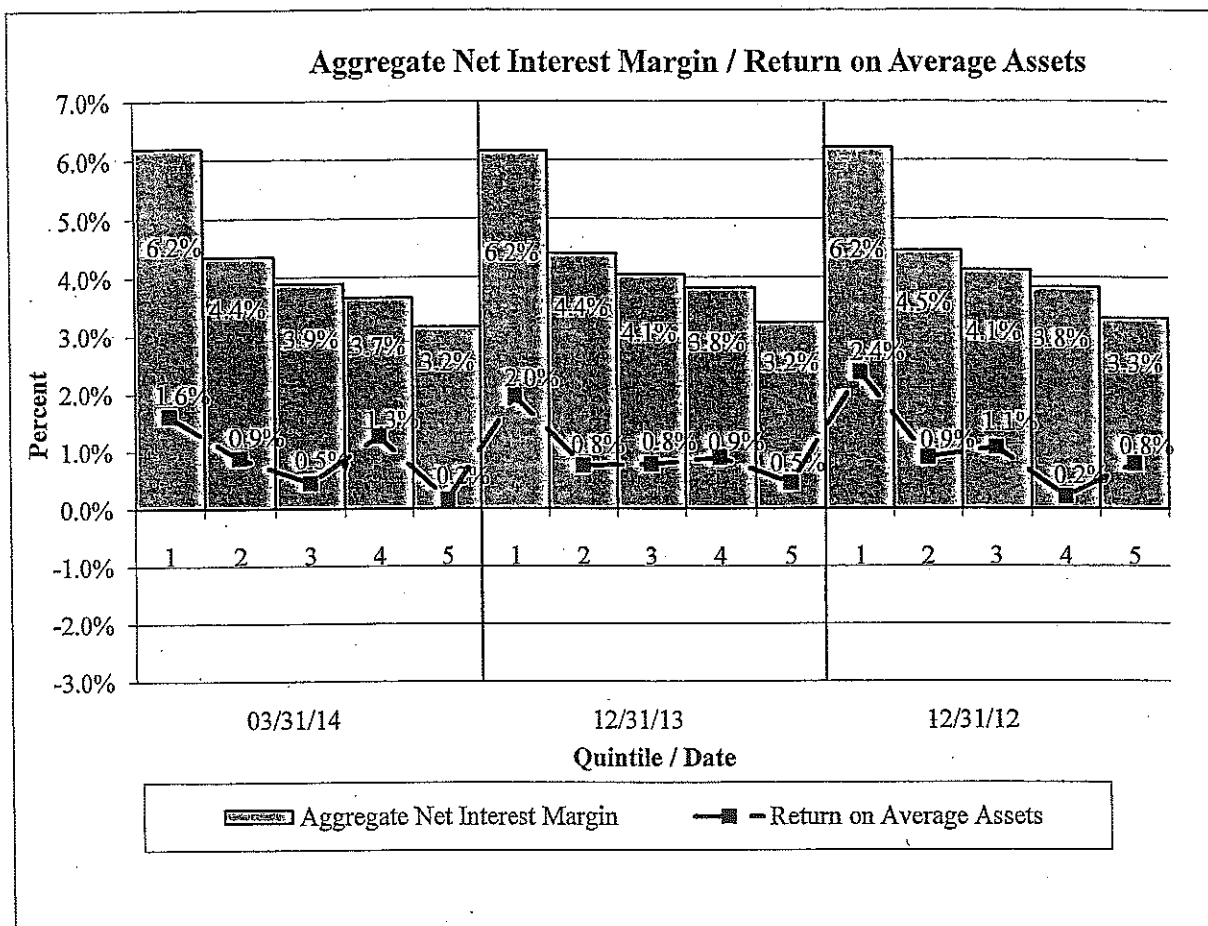
	5/31/2014	8/31/2013	8/31/2012
Number of Institutions at Fiscal Year End 5/31/2014 (30 total)			
Number of Institutions at Fiscal Year End 8/31/2013 (30 total)			
Number of Institutions at Fiscal Year End 8/31/2012 (30 total)			
Number of Examiners	15.5	17.5	16.5
Institutions per Examiner	1.9	1.7	1.8
*Assets per Examiner (Thousands of Dollars)	669,580	565,239	576,308
Percent of Examiners Fully-Commissioned	74.19%	65.71%	75.76%
**Number of Examinations & Visitations Performed	24	31	33
**Percent of Examinations Performed within Time Frames	100%	100%	100%

\* asset figures based on Call Report Data as of 9/30/xx

\*\* fiscal year-to-date, examinations performed every 6-18 months

### SSB's Tier 1 Leverage Capital Ratio





## 2. Industry Status and Departmental Operations – Mortgage Lending Activity:

### a. Residential Mortgage Loan Originators

#### Current Licensing Population:

License Type As of 05/31/2014	Approved		
	Company (MU1)	Branch (MU3)	MLO (MU4)
<i>Auxiliary</i>	9	n/a	
<i>CUSO</i>	4	2	
<i>FSC</i>	1	n/a	
<i>Independent Contractor</i>	63	n/a	
<i>Mortgage Company</i>	1,005	344	
<i>Mortgage Banker</i>	365	1,696	
<i>Mortgage Servicer</i>	138	n/a	
<b>Totals</b>	<b>1,585</b>	<b>2,042</b>	<b>16,511</b>

Through the 3<sup>rd</sup> quarter of FY14, the Department received 5,618 new license requests and 46,260 other filings (amendment, sponsorships, etc.). Since January 2014, the Department has received over 600 new license requests each month. During February and April, the Department saw spikes in the number of applications being filed; 727 and 782 respectively. In reviewing the items filed for these months, it appeared that the majority of the increase in filings was attributable to one nationwide company. Despite the increase in workload, on average, the Department continues to stay within ten business days for processing of filings.

### b. Mortgage Examinations

As of the 3<sup>rd</sup> quarter of FY14, a total of 265 full scope examinations were conducted covering 2,455 Mortgage loan originators. The examinations are continuing to identify various degrees of unlicensed / unauthorized loan origination activity and other compliance issues.

In April, the Department sent nine mortgage examiners to a five day AARMR / CSBS Training School in Dallas which focused on new Consumer Financial Protection Bureau rules.

A Dallas based mortgage examiner retired effective May 31, 2014. This position will be refilled in addition to adding a new Houston and Dallas based examiner positions.

### c. Consumer Complaints/Legal Issues

As of the 3<sup>rd</sup> quarter FY14, a total of 708 consumer complaints were received. This represents no increase when compared to the same period in fiscal year 2013. Loan servicing complaints represent 62% of the total number of complaints received during fiscal year 2014. As of May 31, 2014, there were a total of 122 open consumer complaints with 93% of the complaints aged less than 90 days. No complaints were aged over 180 days at the end of the quarter.

The Department and ten other state regulatory agencies are participating in a Governmental Portal 2.0 working group to enhance the complaint sharing program with the Consumer Financial Protection Bureau.

Enforcement Activity: During the period of April 1, 2014 through May 31, 2014, the Department reports the following Enforcement Activity:

**Disciplinary Cases**

Notices of Hearings Issued: 4

Hearings Held: 2

Final Orders as a Result of a Hearing: 1

Orders to Cease and Desist: 8

Orders to Take Affirmative Action: 15

Agreed Orders to Cease and Desist: 3

Agreed Orders to Take Affirmative Action: 10

Orders of Suspension: 0

Agreed Orders of Suspension: 0

Orders Lifting Suspension: 0

Final Orders Revoking License: 0

Formal Advisory Letters: 15

Other Orders

Amended Orders to Cease and Desist: 0

Amended Orders to Take Affirmative Action: 0

Orders Rescinding Prior Order: 7

Orders of Dismissal: 2

**Appeals of License Denials**

Notices of Hearings Issued: 2

Appeals Received: 1

Hearings Held: 1

Final Orders as a Result of a Hearing: 0

Dismissal Orders: 1

Agreed Orders: 0

**Non-Sufficient Funds (NSF)**

Letters Issued: 0

**Recovery Fund**

Notices of Hearings Issued: 0

Hearings Held: 0

Final Orders as a Result of a Hearing: 1

**Collection Cases Referred to the Attorney General**

Collection Cases Referred to the Attorney General: 0

Legal Issues: There were no Recovery Fund claims paid during the period 4/01/2014 – 5/31/2014.

**d. Other Issues**

None.

**3. Fiscal/Operations Activity:**

**a. Funding Status/Audits/Financial Reporting**

Funding Status/Budget – Staff is in the process of closing out the third quarter of FY14 and building the budget for FY15.

**b. Staffing**

As of June 1, 2014, the agency was staffed at 58 regular full time employees and 1 regular part-time employee with 64 FTEs available.

A Mortgage Examiner retired in May. Currently, several vacancies are posted on the agency's website: a General Counsel, a Network Specialist, and three field Mortgage Examiners, two of which are in Dallas and one in Houston.

**c. Other Issues**

None

**D.**

**Office of Consumer Credit  
Commissioner**

**Industry**

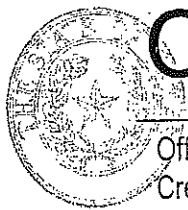
**and**

**Departmental Operations**

**and**

**Legislative Activities**

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# OCCC

Office of Consumer  
Credit Commissioner

2601 N. Lamar Blvd  
Austin TX 78705

512-936-7600  
Fax: 512-936-7610  
Consumer Helpline: 800-538-1579  
Email: info@occc.state.tx.us

## MEMORANDUM

**TO:** Finance Commission Members

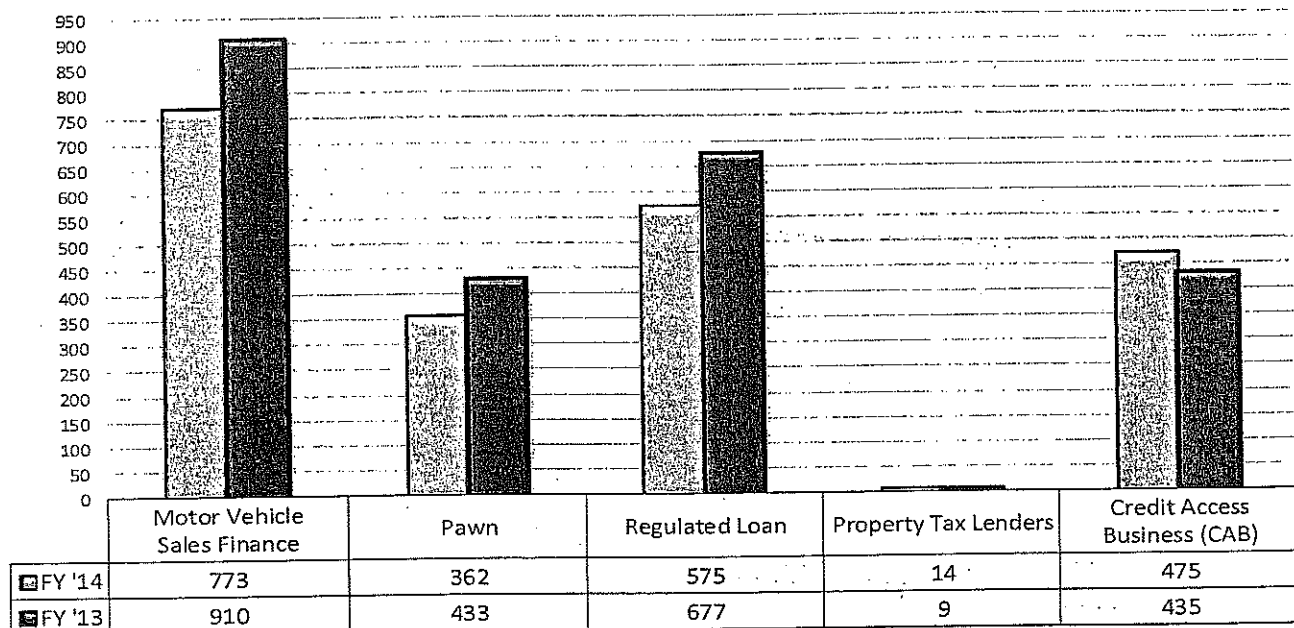
**FROM:** Rudy Aguilar, Director of Consumer Protection

**DATE:** June 1, 2014

**SUBJECT:** Consumer Protection Activities

### EXAMINATION

#### Examinations Conducted: Sept - Apr Fiscal Year Comparison



The total number of examinations conducted from September – April for Fiscal Year 2014 (FY '14) and Fiscal Year 2013 (FY '13), are noted in the chart above. Our productivity lags behind the same time period last fiscal year due primarily to the additional time and resources associated with recruiting and training of new examiners. The five new examiners hired in January 2014 have completed the (Phase I) classroom training and field training in January 2014, and have only begun to independently conduct examinations the latter part of April. I anticipate an increase in our productivity now that these examiners are performing independent examinations. The three examiners hired in March 2014 (Lewis, Riley, and Perez)

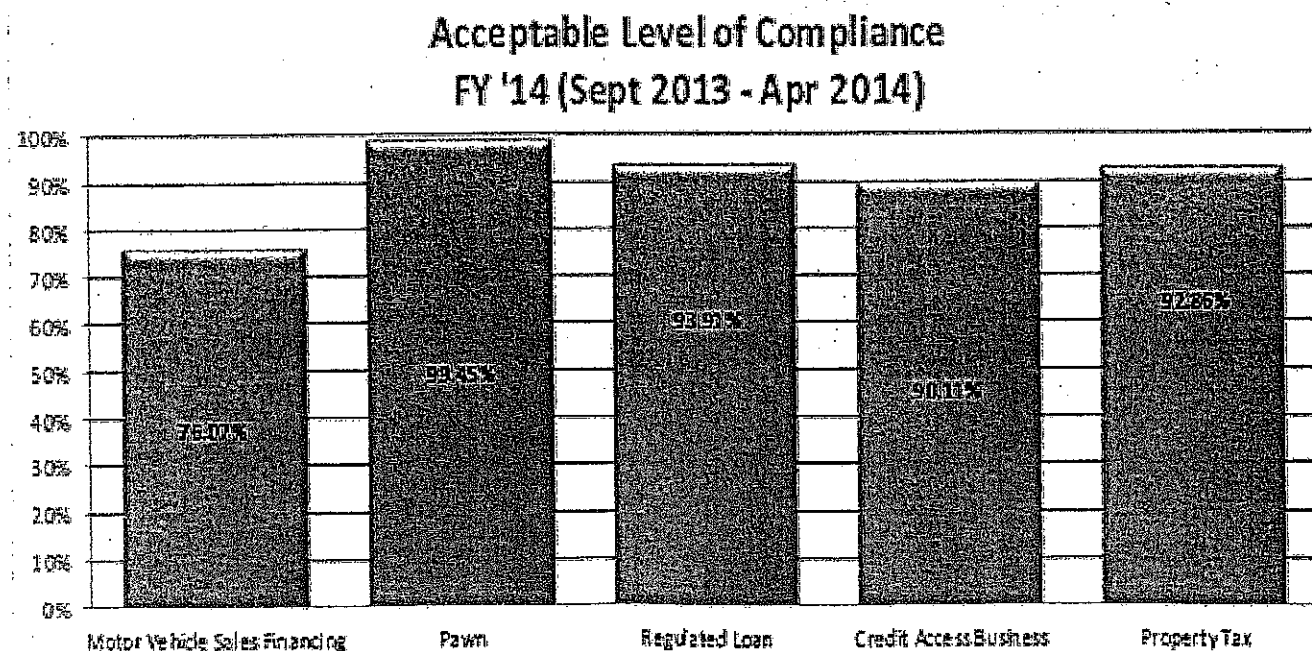
and two examiners hired in April (Ballard and Startz) have all completed Phase I classroom training and are currently receiving field training. These five examiners should be independently conducting examinations sometime during the last quarter of FY '14, and will also increase productivity.

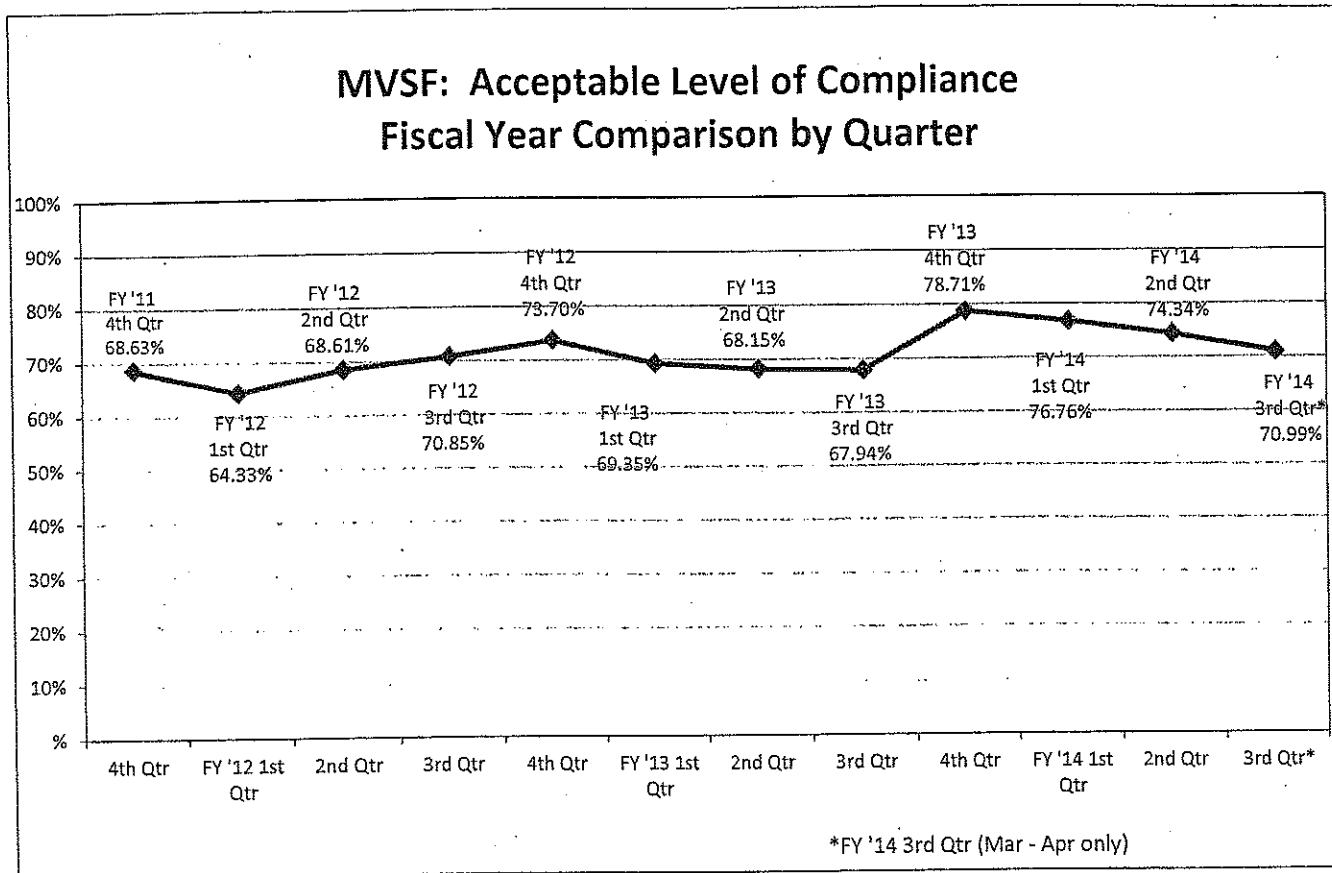
Linda Salazar was hired May 1, 2014 as an Investigator I for the Consumer Assistance Section (CAS). She is currently receiving on-the-job training. Ms. Salazar's position is a replacement for the CAS Customer Service Representative position vacated by Linda Covalt-Tesh who retired the end of May 2014.

William Purce, Senior Review Examiner, Christine Graham, San Antonio Financial Examiner, and Dallas Financial Examiners Jim Blakeman, Eric Fancher, and Bryan Butler attended the Consumer Financial Protection Bureau New Rules Training April 28 – May 2, 2014 in Dallas. The training was jointly sponsored by the American Association of Residential Mortgage Regulators and Conference of State Bank Supervisors.

William Purce, Senior Review Examiner from the Austin staff made a presentation to dealers at the Manufactured Housing Division of the Texas Department of Housing and Consumer Affairs on May 6, 2014 in Austin. Huffman Lewis, Financial Examiner from Austin, made presentations at the TxDMV dealer training seminars on April 16 and 17, 2014 in Houston. Eric Fancher, Financial Examiner, Dallas, made a similar presentation at the TxDMV seminar in El Paso on May 15, 2014.

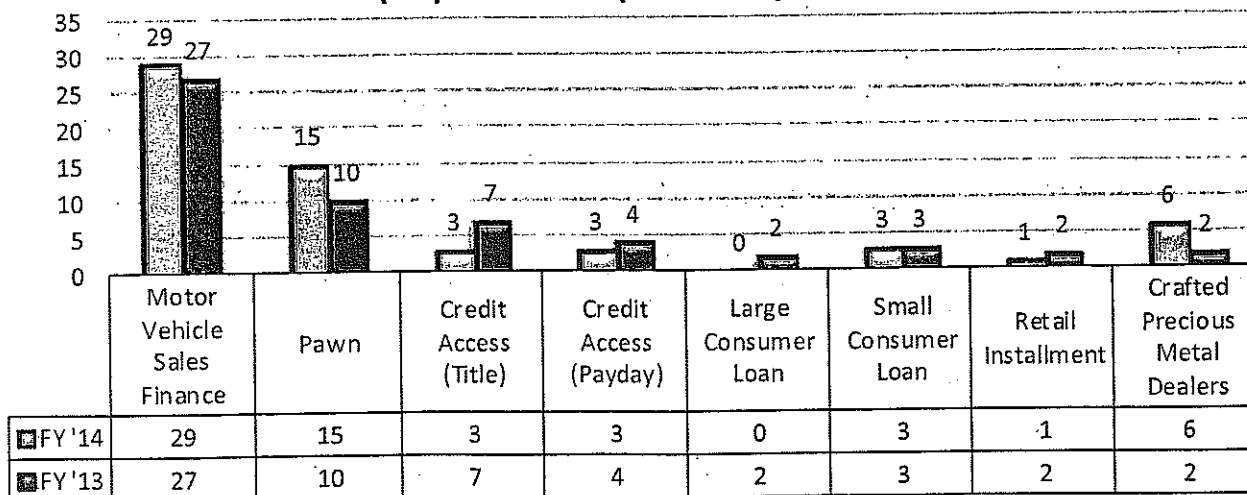
The chart below notes the current acceptable level of compliance in the five examination areas which have remained fairly constant since the last year to date reporting period. The first chart on the following page trends the compliance levels for Motor Vehicle Sales Finance (MVSF) on a quarterly breakdown. Acceptable level of compliance for Motor Vehicle Sales Finance (MVSF) has shown a decline since the fourth quarter of FY '13. While we have no empirical data, our review experience leads us to attribute this to 1) an increase in the "buy here- pay here" (versus franchise) licensees, and, 2) expanded knowledge and experience of field examiners.





## INVESTIGATIONS

**Investigations Completed**  
**FY '14 (Sept 2013 - April 2014) Total: 60**  
**FY '13 (Sept 2012 - April 2013) Total: 57**

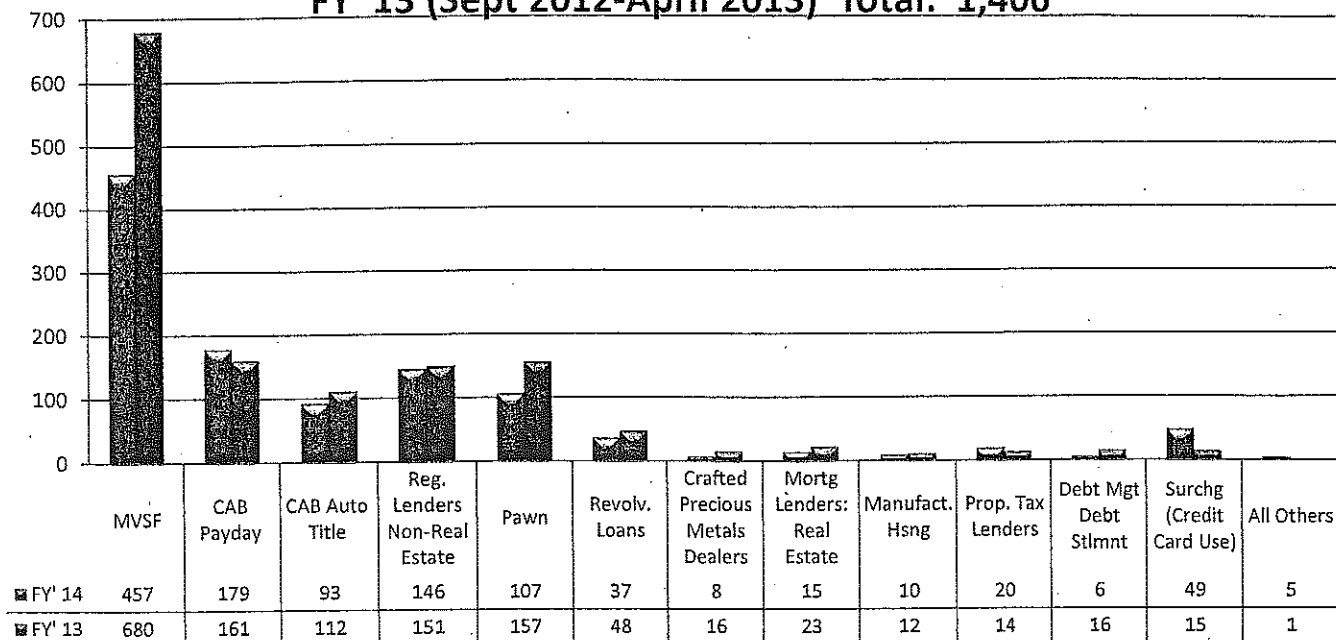


## CONSUMER ASSISTANCE

### Complaints Processed

FY '14 (Sept 2013-April 2014) Total: 1,132

FY '13 (Sept 2012-April 2013) Total: 1,406

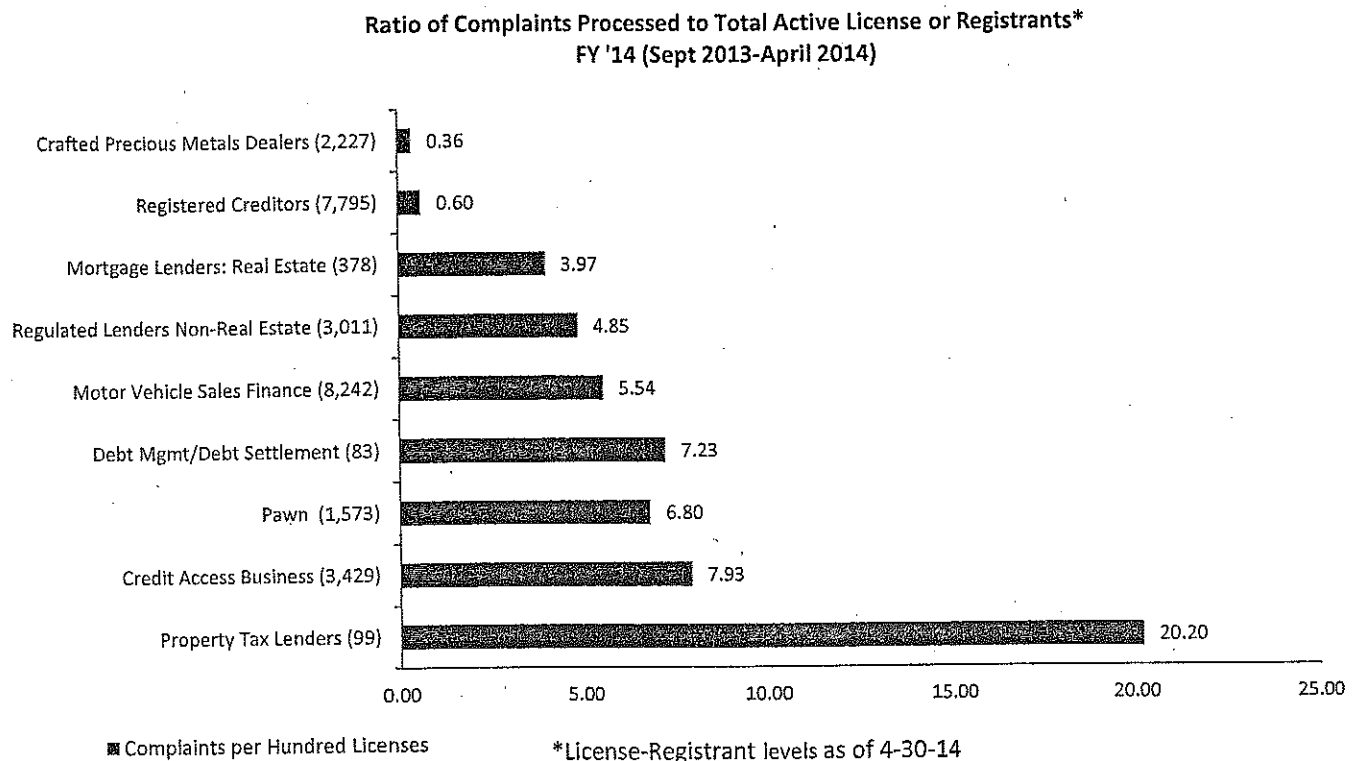


For the reporting period in FY 2014, Motor Vehicle Sales Finance complaints were the largest complaint category (40.4%). The complaint issues by type can be categorized as: repossessions (14%), dispute contracted price and other fees (12%), financing conditioned on subsequent assignments (11%), payment postings/dispute of account balances (14%), unlicensed activity (10%), mechanical issues (6%), and consumer right of rescission (7%).

CAB complaints were the second largest complaint category (payday 15.8% and title loans 8.2%). CAB payday loan complaints can be predominantly broken down as follows: allegations of improper posting of payments-ACH and dispute of account balances (26%), complaints about fee amounts being charged (19%), right of rescission and allegations they did not apply for loans (21%), and collection practices (16%). CAB title loan complaints can be predominantly broken down by type as follows: allegations of improper posting of payments and balance owed not decreasing (26%); complaints about fee amounts being charged (20%), repossessions (18%), and release of titles upon payoff (14%).

The third largest category of complaints for the reporting period was Regulated Lenders Non-Real Estate (12.9%). Regulated Lenders Non-Real Estate issues are predominately related to allegations of abusive collection practices (41%). Other issues are allegations of improper posting of payments (19%), customer service (11%), complaints about fees (10%) and high interest rates (7%).

Pawn was the fourth largest complaint category (9.5%). Pawn issues primarily involved replacement of lost/damaged goods (40%), but also included the monitoring of acceptance of goods (10%), forfeiture of goods (13%), redeeming pawned items (9%), layaway transactions (5%), and other questionable transactions (5%).



In comparison of complaints processed to the number of active license or registrant population, Property Tax Lender complaints maintained the largest ratio with CAB complaints having the second highest ratio level, both of which were ranked first and second respectively for the prior reporting period (September 2013 – February 2014). Pawn was the third highest ratio of complaints in the current reporting with Debt Management/Debt Settlement complaints having the fourth highest ratio.

## Licensing Report

The licensing department, as of May 28, 2014 had 1,268 pending license applications and had processed 637 applications in the month of May. The department is receiving and processing applications through ALECS and by mail. Pawn license renewals and annual reports have been sent and were due June 1<sup>st</sup> with expiration on June 30 if not renewed. Licensees are being encouraged to submit the renewal through ALECS. The information below displays a comparison of the license and registration levels as of April 30, 2013 and April 30, 2014.

	4/30/2014	4/30/2013	CHANGE	%
<b>Licenses</b>				
Regulated Lenders	3,389	3,190	199	6.24%
Credit Access Business	3,429	3,428	1	0.03%
Pawnshops	1,573	1,557	16	1.03%
Pawnshop Employees	7,835	8,213	-378	-4.60%
Motor Vehicle Sales Finance	8,242	7,978	264	3.31%
Commercial Motor Vehicle	16	14	2	14.29%
Property Tax Lenders	99	94	5	5.32%
Mortgage Loan Originators	425	662	-237	-35.80%
<i>Total Licenses</i>	25,008	25,136	-128	-0.51%
<b>Registrations</b>				
Debt Management Service Providers	83	80	3	3.75%
Registered Creditors	7,795	6,303	1,492	23.67%
Crafted Precious Metal	2,227	2,552	-325	-12.74%
Refund Anticipation Lenders	688	497	191	38.43%
<i>Total Registrations</i>	10,793	9,432	1,361	14.43%
<b>Grand Total</b>	35,801	34,568	1,233	3.57%

## Credit Access Business Reporting

The 1<sup>st</sup> quarter reporting cycle for CABs ended on March 31, 2014 with the reports due by April 30, 2014. Approximately 89% of all locations filed their reports by the deadline with that total rising to approximately 99% one day after the deadline. Data review and compilation is currently in process.

The presented statistics represent data reported to the OCCC from CABs in the annual report for calendar year 2013 with comparison data from the 2012 annual report. A noticeable trend is the 9.82% decrease in the number of agreements (new loans and refinances) entered into during 2013. This overall decrease is attributable to a 39.49% increase in multiple installment payday loan agreements that provide for a longer repayment period and are characteristically refinanced less often.

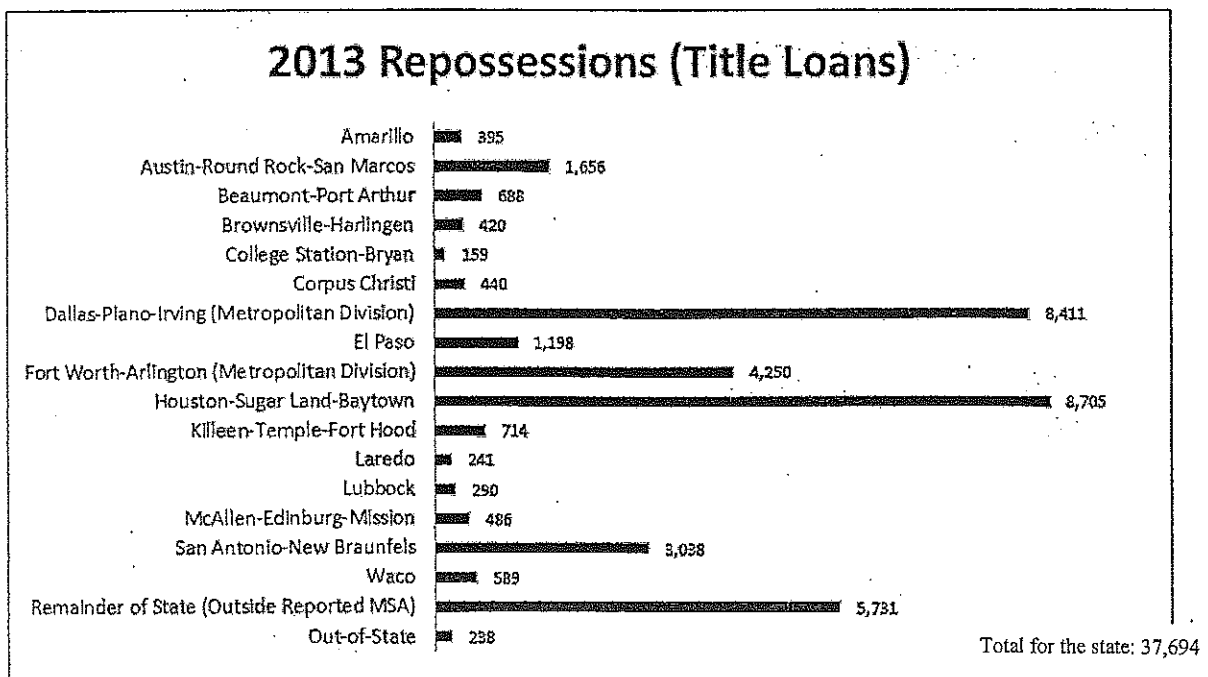
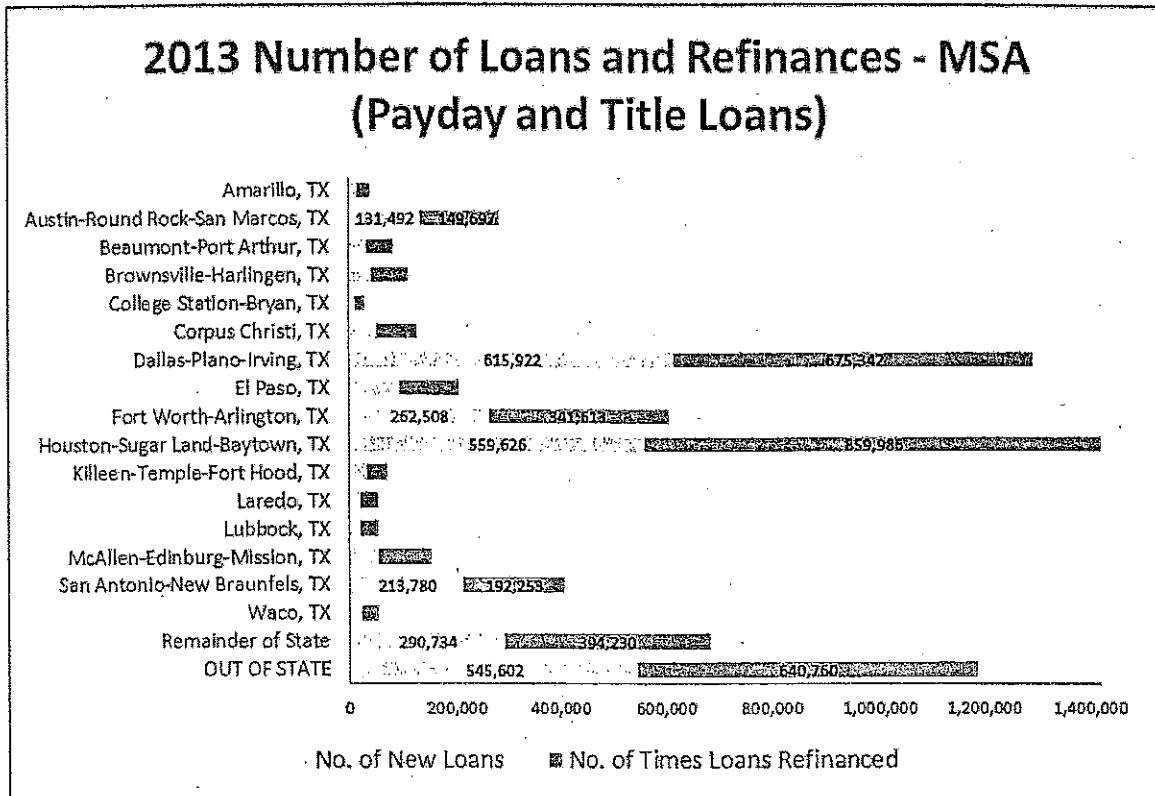
<b>Data Highlights (All Loan Types)</b>	<b>2013</b>	<b>2012</b>
Number of payday (deferred presentment) loans obtained	2,538,458	2,660,270
Number of auto title loans obtained	472,929	475,681
Number of payday (deferred presentment) refinances	3,065,164	3,794,565
Number of auto title refinances	795,670	689,774
Number of vehicles surrendered or repossessed under all auto title loans	37,649	37,062
Total number of locations reporting	3,590	3,458

<b>Payday Loans</b>	<b>Single Installment</b>		<b>Multiple Installment</b>	
	<b>2013</b>	<b>2012</b>	<b>2013</b>	<b>2012</b>
Number of consumers for whom the CAB obtained an extension of credit	1,034,188	1,080,644	485,855	290,139
Number of extensions of credit obtained by CAB	1,865,045	2,238,938	673,413	421,332
Number of refinances	2,911,469	3,622,957	153,695	171,608
Average Loan Amount <sup>1</sup>	\$463	\$468	\$514	\$575
Average Fee per \$100 borrowed <sup>1</sup>	\$23.07	\$22.85	\$133.40	\$137.89
Average original term (in days) <sup>1</sup>	19	19	142	98
Average number of loans and refinances per consumer	4.62	5.42	1.70	2.04

<b>Title Loans</b>	<b>Single Installment</b>		<b>Multiple Installment</b>	
	<b>2013</b>	<b>2012</b>	<b>2013</b>	<b>2012</b>
Number of consumers for whom the CAB obtained an extension of credit	321,832	297,948	57,812	67,691
Number of extensions of credit obtained by CAB	403,902	395,199	69,027	80,482
Number of refinances	758,003	649,620	37,667	40,154
Average Loan Amount <sup>1</sup>	\$1,240	\$1,003	\$1,137	\$1,188
Average Fee per \$100 borrowed <sup>1</sup>	\$21.81	\$22.57	\$70.01	\$91.79
Average original term (in days) <sup>1</sup>	30	29	172	146
Average number of loans and refinances per consumer	3.61	3.51	1.85	1.78

<sup>1</sup> Average statistics for individual products are averaged from the four separate quarterly reports, for each calendar year.

Geographic information for loan volume and motor vehicle repossessions are presented on the following charts. The first chart represents the number of new loans made and the number of times those loans were refinanced in CY 2013 by Metropolitan Statistical Area (MSA). The second chart focuses on the number of motor vehicle repossessions that resulted from title loans in 2013.



# ADMINISTRATION REPORT

## Credit Education

To date, staff has reached 277 consumers through face-to-face contact via: Junior Achievement "JA in a Day" classes, a Corpus Christi presentation, and "Feria Para Aprender" event. Staff is confident that the goal to reach 300 consumers will be met.

Consumer Education staff is scheduled to present at the following events:

1. Texas Council of Economic Education (TCEE) Annual Conference in San Antonio on June 17. The presentation will cover an introduction to OCCC's consumer education program and the background and current status of the Texas Financial Education Endowment grant program. Secondary teachers are the anticipated audience.
2. Texas State Affordable Housing Corporation (TSAHC) August training. The presentation will cover an introduction to OCCC's consumer education program and the background and current status of the Texas Financial Education Endowment grant program. Homeownership counselors are the anticipated audience.

On June 19, KAZI radio station in Austin is launching a community service campaign regarding payday and auto title lending. Hopeton Hey, talk show host of "Economic Perspectives" requested consumer education staff draft a public service announcement to inform consumers about the informational disclosure required in all credit access business "CAB" transactions.

Staff is working on updating the consumer education webpage content.

## Accounting

The accounting department is in the process of implementing new time keeping software that is internet based. This system will allow the agency to eliminate the need for employees to submit paper time sheets. The agency is also in the beginning phase of budget process for FY 2015 request. The accounting department has also reviewing and modifying the reconciliation process for the new agency database.

## Information Technology-Legacy Modernization

ALECS implementation remains challenging, however most planned licensing processes are now functional. Pawnshop and Pawnshop Employee license renewal is available using ALECS. Several hundred pawn shop and employee licenses have been processed directly by licensees using their ALECS account to renew and pay online. We are currently testing the first functional tie-in to our examination process. Our primary focus at this point is completing reporting functionality.

The final production release should be implemented by the end of June, at which point ALECS will go into maintenance mode. During that time low priority fixes and enhancements will be implemented.

## Information Technology-Wireless Bridge Implementation

OCCC completed installation of a wireless bridge linking our internal network directly to our remote offices at Nob Hill. This replaces an older solution that utilized VPN over a DSL connection for our Consumer Assistance Department while also providing connectivity to our new additional 4th floor office.

## Strategic Planning

Members of the Strategic Planning Steering Committee (committee) have worked with agency staff to prepare the final draft of the agency's 2015 – 2019 strategic plan. During May 2014, the agency invited comments from stakeholders; comments were received and integrated into the plan appropriately. A final version of the plan will be presented to the Finance Commission for consideration at the June 20, 2014 meeting.

## Stakeholder Engagement & Communication

### CRAFTED PRECIOUS METALS DEALERS

The agency hosted a teleconference for a Crafted Precious Metals Dealer Stakeholder focus group on May 6, 2014. Participants included entities licensed or registered by the agency and representatives of local law enforcement, software vendors, industry associations, and interested third-parties seeking to ensure effective consumer protections. All participants expressed an interest in identifying methods of effective regulation and protection across various regulatory and oversight entities (e.g. OCCC, law enforcement, and industry associations) and in establishing collaborative working relationships among those entities. Agency staff provided an overview of its regulatory authority as well as general references to regulatory or compliance authority of other state agencies or municipalities (e.g. weights and measures compliance, transaction reporting methods). The Consumer Protection and Legal departments provided an overview on the number and types of complaints received and any enforcement actions that may have been taken.

Some stakeholders expressed a desire to have a statewide and standardized mechanism for submitting transaction reports, increased communication or networking across regulatory entities and municipalities, and the ability to access a searchable, sortable database of current registrants. They further expressed a desire to have consumer-focused information regarding crafted precious metal transactions easily accessible to the general public.

The agency is currently considering available options for producing a consumer brochure and web resource that provides informational material regarding regulatory and enforcement roles, compliance and complaint contact information, and related resources; similar materials may be developed for interested stakeholders and third-parties.

### MOTOR VEHICLE SALES FINANCE

The agency hosted a webinar for motor vehicles dealers on the topic of retail installment contracts (RIC) and documentary fees. The agency provided a general overview of the requirements for an RIC and documentary fee filing requirements, followed by a question-and-answer session. Twenty-six dealers participated in the webinar.

Following the webinar, the agency published a self-paced, interactive and narrated learning module to its website: *Module 2: Retail Installment Contracts*. This learning module complements the webinar and provides dealers an opportunity to learn more about general contract and documentary fee filing requirements, review resources and references associated with the material, and complete self-assessments.

## ADDITIONAL COMMUNICATIONS

In June 2014, the agency will host a credit access business webinar that will address the relationship between CABs and third-party lenders; the roles and responsibilities of a CAB operating under Chapter 393 of the Texas Finance Code; and the licensing and compliance requirements of a CAB. Registration for this webinar will begin on June 13, 2014.

Agency staff continue to provide a combination of live presentations and advisory publications to licensees. During the third quarter, staff will work towards developing an additional self-paced learning module for the motor vehicle sales finance industry; the module will be published by the end of FY14.

### Human Resources

On May 1, 2014, the OCCC welcomed Juan V. Garcia, as its Director of Strategic Communications, Administration, and Planning. Juan previously served in the Office of Governor Rick Perry, as one of his advisors. In that role he advised the Governor on state, fiscal, and policy matters, particularly in the area of Pensions, Investments, and Financial Services. He also served as the Governor's liaison to the financial services related state agencies including the Finance Commission, Office of Consumer Credit Commissioner, Department of Banking, and the Department of Savings and Mortgage Lending. Prior to joining the Governor's Office, Juan served on the Calendars Committee where he assisted the committee in recommending and prioritizing the daily legislative agenda for the Texas House.

Linda Covalt-Tesh retired from the agency on May 31, 2014. Linda worked in the Consumer Assistance department as a customer service representative and had been with the OCCC for more than 24 years.

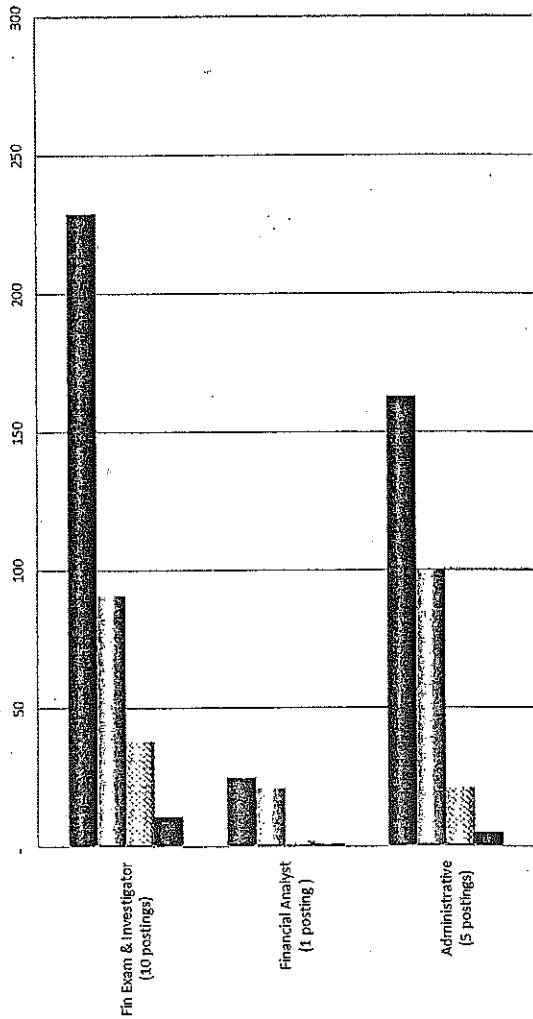
Current recruitment and selection efforts are focused on filling existing vacancies resulting from internal promotions or transfers, resignations, and interagency transfers. The agency's current turnover ratio for FY14 is 12.42%.

Recruitment activities for newly added FY14 positions and existing vacancies.

Current Vacancies (as of 6/4/14)	Cause of Vacancy	Status
Financial Examiner III/IV	Internal Promotion	Job Vacancy Posting: Pending
Financial Examiner II/III	New Position FY 14	Job Vacancy Posting: Pending
(Training Coordinator)		
Database Administrator	New Position FY 14	Job Vacancy Posting: Pending
General Counsel	Anticipated Retirement	Job Vacancy Posting: In Process

# Recruitment & Selection: FY 2014 - YTD

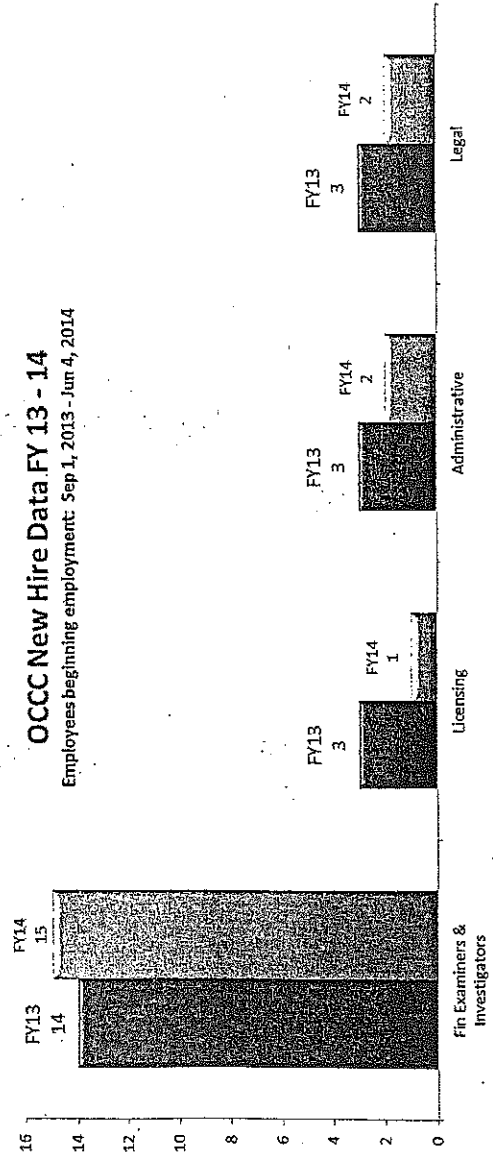
Positions recruited: Sep 1, 2013 - Jun 4, 2014



	Administrative (5 postings)	Financial Analyst (1 posting)	Fin Exam & Investigator (10 postings)
Applications Received	163	25	229
Qualified Applicants	100	21	91
Applicants Interviewed	21	2	38
Applicants Hired	5	1	11

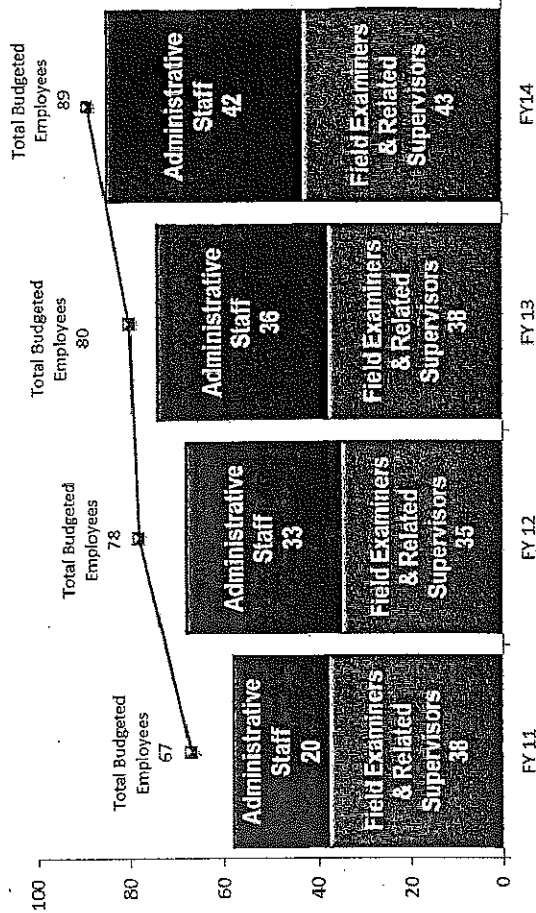
## OCCE New Hire Data FY 13 - 14

Employees beginning employment: Sep 1, 2013 - Jun 4, 2014



## OCCE Employee Data FY 11 - FY 14

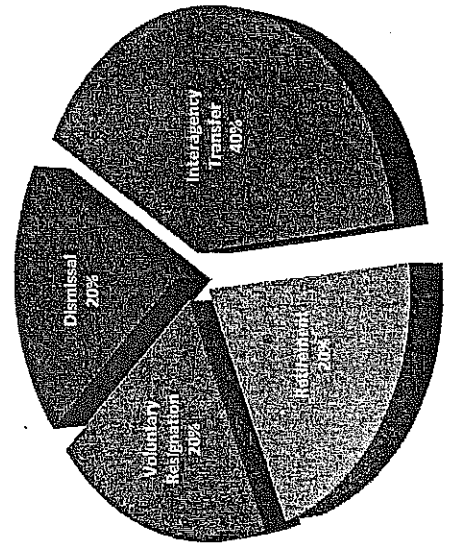
Sep 1, 2013 - Jun 4, 2014



## Turnover Categories FY 14 - Financial Examiners

Sep 1, 2013 - Jun 4, 2014

(2 Interagency Transfers; 1 Retirement; 1 Resignation; 1 Dismissal)





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Austin TX 78705

512-936-7600  
Fax: 512-936-7610  
Consumer Helpline: 800-538-1579  
Email: info@occc.state.tx.us

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MEMORANDUM

TO: Members, Finance Commission

FROM: Sealy Hutchings  
General Counsel

DATE: June 6, 2014

SUBJECT: Legal Department Report

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Enforcement Report

In *GFH Funding, Ltd., d/b/a TaxSolutions, and GFH Servicing, Ltd.*, Cause No. C3407-L13-093, two licensees operated by a common management group are alleged to have violated Chapters 341 and 351 of the Texas Finance Code and Chapter 32 of the Texas Tax Code. The OCCC has agreed to allow the licensees to surrender their property tax lender licenses as a resolution to the alleged violations of the Texas Finance Code and Texas Tax Code.

In *Amarillo Cash for Titles, LLC d/b/a Cash for Titles*, Cause No. C3515-L14-026, Cash for Titles is the operator of a credit access business (CAB) licensed location in Texas. Cash for Titles allegedly violated Chapter 393 of the Texas Finance Code by having common ownership and control with a lender. Under Chapter 393, a CAB must be a truly separate entity from the lender who makes the loan to the consumer/debtor. The principal party behind Cash for Titles is alleged to have an ownership interest in the lender, Ten-Co LLC, who made the loans to consumers that were negotiated by Cash for Titles. The same principal party is also alleged to have an ownership interest in and control of another related company, AJS Investments, LTD. CAB fees collected by Cash for Titles were allegedly shared with and transferred between AJS Investments, LTD and Ten-Co LLC. Cash for Titles has been unwilling or unable to prove that it is operating under separate ownership and control from its lender and has refused to refund prohibited CAB fees. Cash for Titles entered an Agreed Order with the OCCC as a resolution to the alleged violations of the Texas Finance Code. Under the terms of the Agreed Order, Cash for Titles agrees to the revocation of its CAB license and to the payment of a \$1,000.00 administrative penalty.

In *Jose Adams Larios*, Cause No. C3504-L14-068, Jose Adams Larios has a pawnshop employee license issued by the OCCC. Mr. Larios has pled guilty to the state jail felony of Theft (\$1,500 - \$20,000). The OCCC moved for revocation based on the judicial confession Mr. Larios tendered to the district court as part of his deferred adjudication. Mr. Larios confessed to stealing pawn property from his former employer, Big Y Pawn Shop. Theft is considered a crime involving moral character and is grounds for revocation of a pawnshop employee license under

Chapter 371 of the Texas Finance Code and Title 7, Chapter 85, of the Texas Administrative Code. The OCCC issued a notice of hearing for revocation of Mr. Larios' pawnshop employee license. The hearing was held on February 4, 2014 before Holly Compton-Noelke, Administrative Law Judge. Mr. Larios appeared at the hearing with his current employer, who testified in favor of allowing Mr. Larios to keep his pawnshop employee license. On April 11, 2014, the ALJ issued a proposal for decision recommending the revocation of Mr. Larios' license. On June 3, 2014, Commissioner Pettijohn adopted the recommendation of the proposal for decision and issued a final order revoking Mr. Larios' pawnshop employee license.

### **Administrative Rule Report**

At the June meeting, the amendments to Chapter 83, Subchapter A, relating to Rules of for Regulated Lenders, as well as the completed rule review, are being presented for adoption. These amendments resulted from the agency's standard rule review as required by the Government Code. Overall, the changes to these rules are technical in nature. The revisions fall into the following four categories: (1) clarification and consistent terminology; (2) incorporation of agency procedures and streamlined processes; (3) final legislative changes in accordance with Senate Bill 1251 (relating to administrative fee and acquisition charge); and (4) technical corrections and citation updates. On March 18, 2014, the agency distributed a redline version of the rule text to interested stakeholders for review. Upon the commission's approval at the April meeting, the proposed amendments were published in the *Texas Register* on April 25, 2014. The agency did not receive any comments on either the redline version or the proposed rule text as published. The agency believes that these amendments will increase the understandability and enforceability of the regulated lender rules.

The Texas Department of Banking, the Texas Department of Savings and Mortgage Lending, and the OCCC are presenting proposed amendments relating to home equity lending for the June meeting. The main purpose of the proposed amendments is to implement the Texas Supreme Court's decision in *Finance Commission of Texas v. Norwood*, 418 S.W.3d 566 (Tex. 2013). In *Norwood*, the court invalidated home equity interpretations adopted by the Finance Commission and Credit Union Commission relating to the three percent limitation and the location of closing. The proposal amends the interpretations' definition of "interest" and specifies that per diem interest and legitimate discount points are not subject to the three percent limitation. The proposal also provides guidance regarding certain uses of powers of attorney in home equity loans. The agencies circulated drafts of the amendments to interested stakeholders and received two rounds of precomments, in order to assist in the preparation of the proposal.

### **Performance Report**

The following table is an overview of enforcement actions completed by the OCCC for the last three fiscal years and the current fiscal year-to-date. Since the date of our last report, we have completed the third quarter of fiscal year 2014. These figures only reflect enforcement actions that have been fully resolved with a final order; actions that are still pending are not included in the table. Our data does not reflect the work done by this agency to successfully bring businesses into compliance before a final administrative action is necessary. This data also does not account for actions to deny applications of those who fail to show eligibility for a license or assistance provided to license applicants requiring additional documentation to

complete their applications. Our agency completed 43 application denial actions in fiscal year 2012 and 35 denial actions in fiscal year 2013. To date, we have completed 2 denial actions in fiscal year 2014. It is difficult to predict the types of cases our department will pursue, as many factors impact how each enforcement matter will evolve. The following table provides a snapshot of completed enforcement actions during the listed time period.

<b>Enforcement Actions Completed</b>				
	<b>FYTD 2014</b>	<b>FY 2013</b>	<b>FY 2012</b>	<b>FY 2011</b>
<b>Revocation / Suspension Actions</b>				
Regulated Loan License	10	3	5	0
Pawnshop License	1	1	1	1
Pawnshop Employee License	1	2	1	0
Credit Access Business	4	0	1	0
Motor Vehicle Sales Finance License	1	3	1	2
Property Tax Lender License	2	0	0	0
<b>Total Revocation / Suspension Actions</b>	<b>19</b>	<b>9</b>	<b>9</b>	<b>3</b>
<b>Other Actions</b>				
Cease & Desist Regulated	0	1	0	0
Cease & Desist Pawn	0	0	0	0
Cease & Desist Pawn Employee	0	0	0	0
Cease & Desist Motor Vehicle	6	13	0	1
Cease & Desist 345	0	1	0	0
Cease & Desist 394	1	1	0	0
Cease & Desist Property Tax	0	0	0	0
Cease & Desist Credit Access Business	4	0	0	0
Cease & Desist Unlicensed	2	10	18	29
Administrative Penalty Regulated	11	144	103	74
Administrative Penalty Pawn	5	9	6	8
Administrative Penalty Pawn Employee	8	9	6	10
Administrative Penalty Motor Vehicle	69	111	85	33
Administrative Penalty Property Tax	15	12	12	13
Administrative Penalty Credit Access Business	30	52	0	0
Administrative Penalty Crafted Precious Metal Dealer	1	0	0	0
<b>Total Other Actions</b>	<b>152</b>	<b>363</b>	<b>23</b>	<b>168</b>
<b>Total Enforcement Actions Closed</b>	<b>171</b>	<b>372</b>	<b>239</b>	<b>171</b>

### **Final Orders Rendered**

The agency issued 50 final orders since the date of our last report.

### **Administrative Injunctions Rendered**

The agency rendered one administrative injunction since the date of our last report.

### **Administrative Hearings Held**

There was one administrative hearing held since the date of our last report.

### **Administrative Hearings Dismissed**

The agency dismissed three administrative hearings since the date of our last report.

### **Administrative Hearings Scheduled**

The agency has three administrative hearings scheduled during the next 60 days.

### **Preliminary Reports on Administrative Penalties Rendered**

The agency issued 57 preliminary reports since the date of our last report.

### **Litigation**

#### ***Rowell v. Abbott:***

On March 5, 2014, a group of merchants filed a complaint in federal court against Greg Abbott and Leslie Pettijohn in their official capacities, to enjoin enforcement of the credit card surcharge prohibition in Section 339.001 of the Texas Finance Code. The merchants argue that the prohibition is an unconstitutional violation of free speech and that it is void for vagueness, in violation of the First and Fourteenth Amendments to the U.S. Constitution. The case has been assigned to Judge Lee Yeakel in the Western District of Texas, Austin Division. On May 6, the OCCC timely filed an answer that denied the plaintiffs' allegations. On June 6, the plaintiffs filed an amended complaint.

The full style of the case is *Lynn Rowell d/b/a Beaumont Greenery, MPC Data and Communications, Inc., Micah Cooksey, NXT Properties, Inc., Mark Harken, Montgomery Chandler, Inc., Paula Cook, Townsley Designs, LLC, and Shonda Townsley v. Greg Abbott, in his official capacity as Attorney General of the State of Texas and Leslie L. Pettijohn, in her official capacity as Commissioner of the Office of Consumer Credit Commissioner of the State of Texas*. The case number is 1:14-cv-00190-LY.

#### ***SideCars, Inc. v. Texas Department of Insurance:***

On May 30, 2013, the Third Texas Court of Appeals issued its opinion in *SideCars, Inc. v. Texas Department of Insurance*, No. 03-10-00720-CV, 2013 WL 2395189, 2013 Tex. App. LEXIS 6516 (Tex. App.—Austin May 30, 2013, pet. filed) (mem. op.). SideCars contended that its substitute insurance program was exempt from regulation by the Texas Department of Insurance because the program was collateral protection insurance, as defined in Chapter 307 of the Texas Finance Code. The OCCC, which has interpretive authority over this chapter, filed an amicus brief in the case, arguing that even if the SideCars program were collateral protection insurance, it would still be subject to TDI's regulatory authority. The court of appeals rendered

an opinion in favor of TDI, holding that the SideCars program was subject to TDI's regulation. On May 2, 2014, the Texas Supreme Court denied SideCars' petition for review.

***Consumer Service Alliance of Texas, Inc. v. City of Dallas:***

On May 23, 2014, the Fifth Texas Court of Appeals issued its opinion in *Consumer Service Alliance of Texas, Inc. v. City of Dallas*, No. 05-13-00255-CV. The Consumer Service Alliance of Texas (CSAT), TitleMax of Texas, Inc., and Ace Cash Express, Inc. sued the City of Dallas, arguing that the city's ordinance relating to credit access businesses was preempted under state law. The trial court granted the city's plea to the jurisdiction, and the court of appeals affirmed the trial court's decision. This is the first appellate decision dealing with a city ordinance relating to credit access businesses.

**Interpretation Requests**

There are no pending interpretation requests at this time.

**Open Records Requests**

Since the date of our last report, the agency has processed and responded to 44 requests for information under the Texas Public Information Act, with one referral to the Office of the Attorney General (OAG).

**Open Records Referrals**

In February, our agency received a public information request for all 2012 data reports filed by CAB licensees. The requestor asked for "2012 Payday and Auto Title Lending Activities reported to the Office of Consumer Credit Commissioner" on a "per licensee" basis. The agency did not release the 2012 CAB data reports and referred them to the OAG Open Records Division for a ruling. The agency raised the issue that the information should be considered proprietary.

The agency notified all CAB licensees, CAB compliance officers, as well as other interested stakeholders, of this request and subsequent OAG referral. Several CAB licensees submitted legal arguments to the OAG in an effort to protect their private or proprietary information. On April 9, 2014, the OAG Open Records Division issued its ruling (OR2014-05887), stating: "[T]he requested information constitutes commercial or financial information, the release of which would cause substantial competitive injury. Accordingly, the commissioner's office must withhold the remaining requested information under section 552.110(b) of the Government Code." In compliance with the OAG's ruling, the agency has not released the 2012 CAB data reports.

Rule Item/Purpose	Proposal Date	Adoption Date/Status
<b>Rules for Regulated Lenders - Adopt Amendments (from Rule Review)</b> 7 TAC, Part 5, Chapter 83, Subchapter A  To provide clarification and consistent terminology; to incorporate agency procedures and streamline processes; to make final changes in accordance with recent legislation; and to make technical corrections  Precomment draft distributed 03/18/14 Proposed amendments published 04/25/14 No comments received on draft or official publication	04/11/14	Presented for Adoption 06/20/14
<b>Rules for Regulated Lenders - Adopt Rule Review</b> 7 TAC, Part 5, Chapter 83, Subchapter A  To readopt the rules pursuant to the completed rule review under Texas Gov't Code, §2001.039	Not applicable	Presented for Adoption 06/20/14
<b>Home Equity Lending - Proposed Amendments</b> 7 TAC, Part 8, Chapter 153  To implement the Texas Supreme Court's decision in <i>Finance Commission of Texas v. Norwood</i>	06/20/14	Adoption Presentation Scheduled for 10/17/14
<b>Residential Mortgage Loan Originators Applying for Licensure with the OCCC Under the SAFE Act - Rule Review</b> 7 TAC, Part 1, Chapter 2  To conduct standard rule review under Texas Gov't Code, §2001.039	12/12/14	
<b>Retail Creditors - Rule Review</b> 7 TAC, Part 5, Chapter 86  To conduct standard rule review under Texas Gov't Code, §2001.039	12/12/14	

**D. Office of Consumer Credit Commissioner**

2. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Chapter 83, Subchapter A, Concerning Rules for Regulated Lenders, Resulting from Rule Review.

**PURPOSE:** In general, the purpose of the amendments to 7 TAC, Chapter 83, Subchapter A is to implement changes resulting from the commission's review of Rules for Regulated Lenders under Texas Government Code, §2001.039. The majority of the rules are being amended. Many of the amendments provide clarification and consistent terminology. Other revisions serve to incorporate agency procedures and streamline processes. Certain changes provide consistency with recent legislation. Most of the changes are technical in nature, including improvements in grammar and punctuation, updates to citations, deletion of unnecessary language, and changes in formatting.

**RECOMMENDED ACTION:** The agency requests that the Finance Commission approve the amendments to 7 TAC, Chapter 83, Subchapter A without changes as previously published in the *Texas Register*.

**RECOMMENDED MOTION:** I move that we approve the amendments to 7 TAC, Chapter 83, Subchapter A.

*Title 7. Banking and Securities*

*Part 5. Office of Consumer Credit Commissioner*

*Chapter 83. Regulated Lenders and Credit Access Businesses*

*Subchapter A. Rules for Regulated Lenders*

*§§83.101 - 83.858*

The Finance Commission of Texas (commission) adopts amendments to 7 TAC, Chapter 83, Subchapter A, §§83.101 - 83.102, 83.203, 83.301 - 83.304, 83.307, 83.309 - 83.311, 83.403 - 83.405, 83.501 - 83.505, 83.601 - 83.604, 83.606, 83.701 - 83.704, 83.708, 83.751 - 83.752, 83.754, 83.756 - 83.757, 83.801, 83.805, 83.809, 83.828 - 83.829, 83.831, 83.836 - 83.837, 83.851, and 83.858, concerning Rules for Regulated Lenders. The adopted changes affect rules contained in Division 1, concerning General Provisions; Division 2, concerning Authorized Activities; Division 3, concerning Application Procedures; Division 4, concerning License; Division 5, concerning Interest Charges on Loans; Division 6, concerning Alternate Charges for Consumer Loans; Division 7, concerning Interest and Other Charges on Secondary Mortgage Loans; Division 8, concerning Refunds for Precomputed Loans; Division 9, concerning Insurance; Division 10, concerning Duties and Authority of Authorized Lenders; and Division 11, Prohibitions on Authorized Lenders.

The commission adopts the amendments without changes to the proposed text as published in the April 25, 2014, issue of the *Texas Register* (39 TexReg 3333).

The commission received no written comments on the proposal.

In general, the purpose of the amendments to 7 TAC, Chapter 83, Subchapter A is to implement changes

resulting from the commission's review of Rules for Regulated Lenders under Texas Government Code, §2001.039. The notice of intention to review 7 TAC, Chapter 83, Subchapter A was published in the March 21, 2014, issue of the *Texas Register* (39 TexReg 2147). The commission did not receive any comments on the notice of intention to review.

The agency distributed an early draft of proposed changes to interested stakeholders for review. The agency believes that the participation of stakeholders in the rulemaking process is invaluable in presenting balanced rule actions to the commission.

The majority of the rules in Chapter 83, Subchapter A are being amended. Many of the amendments provide clarification and consistent terminology. Other revisions serve to incorporate agency procedures and streamline processes. Certain changes provide consistency with recent legislation. Most of the changes are technical in nature, including improvements in grammar and punctuation, updates to citations, deletion of unnecessary language, and changes in formatting. Any regulated lender rule not included in this adoption will be maintained in its current form.

The individual purposes of the amendments to each section are provided in the following paragraphs. Specific explanation is included with regard to new substantive language, substantive changes in

language, and significant formatting amendments. The remaining changes throughout all sections consist of minor revisions to formatting, grammar, punctuation, and other technical corrections. The technical changes will be summarized more generally.

Section 83.101, Purpose and Scope, includes several instances where "chapter" has been replaced with "subchapter" due to the relocation of these rules since the last rule review. This change is recurring throughout Subchapter A of Chapter 83. In addition to §83.101, the following rules also contain amendments to provide the consistent use of "subchapter": §§83.102, 83.203, 83.301, 83.303, 83.604, 83.801, and 83.836.

In §83.102(1), the definition of "Acquisition charge" has been revised by deleting "An interest" before "charge" to provide consistency with Senate Bill (SB) 1251, as recently enacted by the Texas Legislature. The bill states that acquisition charges and administrative fees under Texas Finance Code, Chapter 342, Subchapters E and F are not interest. A number of rules contain amendments to provide consistency with SB 1251. These changes remove any references to the acquisition charge being an interest charge, remove any references to the acquisition charge being subject to refunding, and revise other language as necessary to reflect the bill's changes in the law.

In addition to §83.102, the following provisions also include amendments to incorporate changes under SB 1251: subsections (a) and (b) of §83.501, Maximum Interest Charge; paragraph (4) of §83.503, Administrative Fee; subsection

(a)(6) of §83.601, Authorized Charges; subsection (b) of §83.752, Specific Application to Subchapter E and G Loans; subsection (a) of §83.756, Refund of Precomputed Interest for Subchapter F Loans; Prepayment in Full Before the First Installment Due Date; subsection (a) of §83.757, Refund of Precomputed Interest for Subchapter F Loans; Prepayment in Full After the First Installment Due Date and Before the Final Installment Due Date; and paragraph (3)(H) of §83.828, Files and Records Required (Subchapter E and F Lenders). Also, the payday loans figure in §83.604(c) has been updated to incorporate increased charges authorized by the legislation.

In §83.302(1)(A)(iii) regarding the signature on a new license application, the rule's prior language required each owner of a proprietorship and each general partner of a partnership to sign the application. As part of an online process, the agency will only require one owner or one partner, respectively, to sign for these applicants. The amendments reflect that "the owner" of a proprietorship and "one general partner" of a partnership must sign the application. Additionally, the tagline for this provision has been changed from plural to singular ("Signature") to further reflect the agency's requirement of one signature.

Changes have been made in §83.302(1)(D) - (G), (J), and (K) to provide more consistency with the agency's updated licensing forms. Several changes simply revise the rule language to better match the titles of the forms.

In relation to a "responsible person," also referred to as "a person responsible for day-to-day operations," these parties are not

ADOPT AMENDMENTS  
7 TAC, PART 5  
CHAPTER 83, SUBCHAPTER A  
Page 3 of 31

required to provide the forms principal parties submit (e.g., Personal Affidavit, Personal Questionnaire, Employment History). Thus, the amendments as adopted remove the responsible person from these provisions in §83.302(1)(E), (F), and (G). To further incorporate this concept, revisions to §83.302(3) regarding branch applications delete the forms and state that the responsible person must "be listed" on the application. This latter change has also been made in §83.303(c)(1)(B) regarding transfer applications.

Updates have been made to §83.302(1)(K) to provide more precise citations to the Texas Business and Commerce Code provisions concerning assumed name certificates.

In §83.303(a), which defines "transfer of ownership," the rule had stated: "a 'transfer of ownership' does not include a change in proportionate ownership as defined in §83.304 of this title." However, §83.304(c)(2) contains an exception where a transfer has been required by the existing language. Consequently, the adopted revisions in §83.303(a) add a reference to the exception in §83.304(c)(2) to provide more clarity to licensees.

Additionally, other technical corrections have been made throughout §83.303, including improved grammar and the deletion of unnecessary language.

Section 83.304 describes what action a licensee must take when it changes the proportion of ownership in or the form of the licensed entity and lists the time frame within which the licensee must notify the agency. When changes in organizational form and mergers of parent entities do not

change the principal parties or entities that own the business, the amendments in subsections (a) and (b) clarify when transfers are required and eliminate unnecessary transfer applications. In §83.304(a), the amendments state that the exact same individuals or entities must still own the business for a change in organizational form to only require a license amendment as opposed to a transfer application.

In §83.304(a) and (b), notification of these changes in organizational form and parent mergers that do not affect licensee ownership have been streamlined to the filing of a license amendment. Licensees have also been provided additional time to notify the agency of these actions. The amendments to §83.304 are consistent with rule revisions previously adopted for other industries regulated by the agency and will provide consistency in the licensing process.

The agency's acronym "OCCC," as currently defined in §83.102(18), has replaced the use of "commissioner" in §83.304(c)(1). The agency believes that the use of "OCCC" provides better clarity to the rules when the context calls for action by the agency, as opposed to the commissioner specifically. In addition to §83.304, the following rules include amendments that replace "commissioner" with "OCCC": paragraph (3)(H) of §83.828, Files and Records Required (Subchapter E and F Lenders); and §83.831, Review of Electronic Recordkeeping Systems and Optical Imaging Systems.

The changes to the following sections involve revisions to improve grammar, formatting, and make other technical corrections: §§83.304, 83.311, 83.603,

ADOPT AMENDMENTS  
7 TAC, PART 5  
CHAPTER 83, SUBCHAPTER A  
Page 4 of 31

83.604, 83.701, 83.809, 83.828, 83.837, and 83.858.

In §83.307(a), concerning the initial review of an application, the rule's prior language indicated that notice would be sent regarding complete applications. However, agency practice is to send notice of incomplete applications, along with the information necessary for the application to be accepted as complete. The amendments conform the rule with current agency practice. In addition, the response timeline in subsection (a) has been revised to "14 calendar days," as opposed to the former phrase, "10 working days." In most instances, these two timeframes are the same, but the use of calendar days maintains better consistency with the timelines in the agency's other regulated areas.

Thus, §83.307(a) as revised for this adoption is as follows: "A response to an incomplete application will ordinarily be made within 14 calendar days of receipt stating that the application is incomplete and specifying the information required for acceptance."

The phrase in §83.307(e) regarding fingerprint processing is no longer necessary, as fingerprint fees are currently paid to a third party. Thus, the phrase "and the fingerprint processing fee" has been deleted from this subsection.

Subsections (a) and (b) of §83.309, License Status, have been revised to provide more consistency with the agency's updated licensing forms. The licensing amendment form has been streamlined for use by multiple licensee types, and hence, the phrase "Regulated Loan" has been deleted from this form title.

Several changes have been made to §83.310, Fees, including revisions to improve punctuation, remove unnecessary language, provide clarification, and incorporate online processes. These changes are described in the following paragraphs.

Section 83.310(a) had listed set amounts of \$600 and \$250 for active and inactive license assessment fees, respectively. Similarly, §83.310(g)(1)(A) had stated that an annual assessment of a "fixed fee of \$600" is required for each license, as well as a volume fee of set amounts for different types of Chapter 342 loans as provided in subsection (g)(1)(B). Also, subsection (g)(2) had provided a fixed annual assessment of \$250 for each inactive license. As the agency has often been able to discount annual fees, the following changes have been made in subsections (a) and (g): a "fee not to exceed \$600," a volume fee "that does not exceed an amount that is the greater of [the three listed options]," and the addition of "will not exceed" to subsection (g)(2). These changes allow discounted annual fees as appropriate.

Section 83.310(c) regarding fingerprint processing is no longer necessary, as noted earlier. Thus, subsection (c) has been deleted from the rule and the remaining subsections have been relettered accordingly.

In §83.310(d) regarding license amendments, this rule's prior language did not reflect revisions made to other rules. Hence, the amendments revise subsection (d) in order to incorporate changes made to §83.303 and §83.304 relating to transfers and changes in ownership.

With respect to license duplicates in §83.301(e), licensees will soon be able to

ADOPT AMENDMENTS  
7 TAC, PART 5  
CHAPTER 83, SUBCHAPTER A  
Page 5 of 31

print license duplicates online at no charge. However, if the licensee requests that a duplicate be sent via mail, the \$10 fee will be required. Thus, the amendments reflect a \$10 fee only if a duplicate license is requested to be sent by mail.

Section 83.403 outlines the procedure for delivery by the agency of a notice of delinquency when a licensee is late paying its annual assessment fee. The rule's prior language had required the notice to be sent via US mail. Many of these notices will soon be delivered to licensees electronically. Therefore, §83.403 includes revisions stating that notices of delinquency will be considered given under the statute when "sent to the licensee at the email or mailing address on file with the OCCC."

Section 83.404 describes the effect of criminal history information on applicants and licensees. Section 83.405 is the companion rule to §83.404 and contains information concerning the crimes directly related to the fitness for holding a license, as well as the mitigating factors that will be considered. To provide uniformity throughout these two related rules, the term "person" has replaced the terms "individual" or "principal party" in several instances. The use of "person" is consistent with the authorizing statutory provisions found in the Texas Occupations Code. "Person" also includes both natural individuals as well as legal entities that may have criminal history related to a license. To further the applicability of these sections to individuals and entities, the language in §83.404(d)(1) and (2) has been revised to include references to an applicant, licensee, or principal party that may have criminal convictions involving moral character or relating to the duties of a regulated lender.

Other changes to §83.404 and §83.405 include improvements in grammar and statutory consistency. In §83.404(b) the verb "furnish" has been replaced with the verb "provide" in two instances. The latter term is reflective of a more modern and plain language approach in regulations. In §83.405(b), the mitigating factors have been revised in order to better track the statutory language found in Texas Occupations Code, §53.023.

The amendments to subsection (b)(2) of §83.502, Treatment of Periods Less than a Full Month Before the First Installment Date, serve to update a citation to Regulation Z of the Truth in Lending Act so that it reflects the relocation of the regulation in federal law. A number of rules involve revisions to citations of federal regulations. In addition to §83.502, the following provisions also contain amendments to incorporate changes to federal citations: subsection (f) of §83.504, Default Charges (for Chapter 342, Subchapter E loans); subsection (f) of §83.602, Default Charges (for Chapter 342, Subchapter F loans); subsection (f) of §83.703, Default Charges (for Chapter 342, Subchapter G loans); subsection (f) of §83.708, Balloon Payments; paragraphs (10)(a)(xi) and (12) of §83.828, Files and Records Required (Subchapter E and F Lenders); and subsection (b) of §83.851, Duplication of Loans. These amendments include updates to Regulation Z of the Truth in Lending Act, Regulation B of the Equal Credit Opportunity Act, as well as changes to improve grammar and punctuation. The revised grammar continues the use of the verb "provide" discussed earlier. As used in the citation references, "provided by" has replaced the phrase "as set forth in."

ADOPT AMENDMENTS  
7 TAC, PART 5  
CHAPTER 83, SUBCHAPTER A  
Page 6 of 31

The three default charges sections have experienced parallel changes to better track their authorizing statutory language. In each respective "Default period" subsection, the word "after" has been inserted before the phrase "the 10th day." The resulting first sentence of each adopted provision reads as follows: "A default charge may not be assessed until after the 10th day after the installment due date." The revisions are mere technical corrections to provide more precise language and maintain how default periods have been calculated by the agency. The default period corrections are contained in the following provisions: subsection (d) of §83.504; subsection (e) of §83.602, and subsection (d) of §83.703.

Corresponding changes have been made in two of the deferment rules, §83.505 and §83.704, in order to incorporate language related to digital records, to provide consistent terminology, and to update examples. In §83.505(d) and §83.704(c), the term "noted" has been replaced by "recorded" and the verb "furnished" has been replaced by "provided." Additionally, the final sentence of each subsection for this adoption reads as follows: "The notice must be signed by the borrower to indicate the borrower's agreement to a bilateral deferment." These changes provide more modern language that integrates digital recordkeeping and electronic signatures. Regarding consistent terminology, the word "unpaid" has been inserted after "succeeding" at the end of the "Balance method" provisions found in §83.505(e)(1) and §83.704(d)(1). Additionally, the dates used in the "Example of deferment calculation" provisions contained in §83.505(e)(1)(B)(v) and §83.704(d)(1)(B)(v) have been updated.

Section 83.751, Scope, contains three changes that provide consistent and accurate terminology. In subsection (a), "division" has replaced "subchapter," due to the relocation of these rules since the last review. In subsections (b) and (c), the terms used for refunding methods include corrections to insert the word "scheduled" before "installment earnings method," and to replace "period" with "periodic" in "sum of the periodic balances method."

Adopted revisions to four sections provide consistent terminology regarding credit insurance that may be offered by the lender. In several instances, the term "credit" has been added before the phrases "involuntary unemployment insurance," "life insurance," and "accident and health insurance." These changes provide consistency throughout the subchapter and uniformity with the statutory terms used in the Texas Insurance Code. The amendments regarding credit insurance are contained in the following provisions: paragraph (4) of §83.801, Definitions; subsection (c) of §83.805, Authorized Credit Insurance; paragraphs (3), (9), and (10) of §83.828, Files and Records Required (Subchapter E and F Lenders); and paragraphs (2) and (5) of §83.829, Files and Records Required (Subchapter G Lenders).

In §83.828(13), the official correspondence file provision has been revised in order to maintain consistency with regulations in other areas and to allow electronic access to statutes and regulations to satisfy compliance. Additionally, the tagline or title of this provision has been changed to "Compliance file."

The amendments are adopted under Texas Finance Code §11.304, which

authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the Finance Commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 342.

*§83.101. Purpose and Scope.*

(a) Purpose. The purpose of this subchapter [~~chapter~~] is to assist in the administration and enforcement of Texas Finance Code, Chapter 342.

(b) Scope.

(1) This subchapter [~~chapter~~] applies to all persons engaged in the business of making, transacting, or negotiating loans subject to Texas Finance Code, Chapter 342. As such, this subchapter [~~chapter~~] only applies to lenders and brokers in the business of making, transacting or negotiating loans that:

(A) - (C) (No change.)

(2) This subchapter [~~chapter~~] applies to term loans extended primarily for personal, family, or household purposes.

(3) This subchapter [~~chapter~~] also applies to a loan broker who arranges, negotiates, or brokers loans for a lender that funds the loan. This subchapter [~~chapter~~] does not apply to any loans made under Texas Finance Code, Chapters 301 - 308 or Chapter 339, including commercial and agricultural loans.

*§83.102. Definitions.*

Words and terms used in this subchapter [~~chapter~~] that are defined in Texas Finance Code, Chapter 342 have the same meanings as defined in Chapter 342. The following words and terms, when used in this subchapter [~~chapter~~], will have the following meanings, unless the context clearly indicates otherwise.

(1) Acquisition charge-- A [~~An~~ interest] charge authorized for making the cash advance under the authority of Texas Finance Code, §342.252 and §342.259.

(2) (No change.)

(3) Amount financed--The amount of money which is used, forborne, or detained and upon which interest is charged. The cash advance plus any other amounts that are financed by the creditor are included. Any points or other prepaid finance charges, excluding the administrative loan fee, that are not paid at closing and that are financed as part of the transaction are included in the amount financed. This definition is only applicable for the purposes of this subchapter [~~chapter~~] for computing earnings, deferments, maximum charges, and determining refunds of unearned interest. It is not intended to be synonymous with the similar term that is used in the Truth in Lending Act (15 U.S.C. §§1601 - 1667f).

(4) - (30) (No change.)

*§83.203. Attempted Evasion of Applicability of Subchapter* [~~Chapter~~].

A "device, subterfuge, or pretense to evade the application" of this subchapter

ADOPT AMENDMENTS  
7 TAC, PART 5  
CHAPTER 83, SUBCHAPTER A  
Page 8 of 31

[chapter], as used in Texas Finance Code, §342.051(b) refers to any transaction:

(1) - (2) (No change.)

*§83.301. Definitions.*

Words and terms used in this subchapter [chapter] that are defined in Texas Finance Code, Chapter 342, have the same meanings as defined in Chapter 342. The following words and terms, when used in this subchapter [chapter], will have the following meanings, unless the context clearly indicates otherwise.

(1) - (2) (No change.)

*§83.302. Filing of New Application.*

An application for issuance of a new regulated loan license must be submitted in a format prescribed by the commissioner at the date of filing and in accordance with the commissioner's instructions. The commissioner may accept the use of prescribed alternative formats to facilitate multistate uniformity of applications or in order to accept approved electronic submissions. Appropriate fees must be filed with the application and the application must include the following:

(1) Required application information.  
All questions must be answered.

(A) Application for License.

(i) - (ii) (No change.)

(iii) Signature [Signature(s)].  
Electronic signatures will be accepted in a manner approved by the commissioner.

(I) If the applicant is a proprietor, the [each] owner must sign.

(II) If the applicant is a partnership, one [each] general partner must sign.

(III) - (V) (No change.)

(B) - (C) (No change.)

(D) Appointment of Statutory Agent and Consent to Service [Disclosure]. Each applicant must appoint a [The] statutory agent and consent to service to that agent [disclosure must be provided by each applicant]. The statutory agent is the person or entity to whom any legal notice may be delivered. The agent must be a Texas resident and list an address for legal service. If the statutory agent is a natural person, the address must be a physical residential address. If the applicant is a corporation or a limited liability company, the statutory agent should be the registered agent on file with the Office of the Texas Secretary of State. If the statutory agent is not the same as the registered agent filed with the Office of the Texas Secretary of State, then the applicant must submit certified minutes appointing the new agent.

(E) Personal Affidavit. Each individual meeting the definition of "principal party" as defined in §83.301 of this title (relating to Definitions) [or who is a person responsible for day-to-day operations] must provide a personal affidavit. All requested information must be provided.

(F) Personal Questionnaire. Each individual meeting the definition of "principal party" as defined in §83.301 of this title [or who is a person responsible for

ADOPT AMENDMENTS  
7 TAC, PART 5  
CHAPTER 83, SUBCHAPTER A  
Page 9 of 31

~~day-to-day operations]~~ must provide a personal questionnaire. Each question must be answered. If any question, except question 1, is answered "yes," an explanation must be provided.

(G) Employment History. Each individual meeting the definition of "principal party" as defined in §83.301 of this title ~~[or who is a person responsible for day-to-day operations]~~ must provide an employment history. Each principal party should provide a continuous 10-year history, with no gaps, accounting for time spent as a student, unemployed, or retired. The employment history must also include the individual's association with the entity applying for the license.

(H) - (I) (No change.)

(J) Financial Statement and Supporting Financial Information.

(i) (No change.)

(ii) Sole proprietorships. Sole proprietors must complete all sections of the ~~[Personal]~~ Financial Statement and the Supporting Financial Information, or provide a personal financial statement that contains all of the same information requested by the ~~[Personal]~~ Financial Statement and the Supporting Financial Information. The ~~[Personal]~~ Financial Statement and Supporting Financial Information must be as of the same date.

(iii) - (v) (No change.)

(K) Assumed name certificates ~~[Name Certificates]~~. For any applicant that does business under an "assumed name" as that term is defined in Texas Business and

Commerce Code, §71.002 ~~[Chapter 71]~~, an assumed name certificate ~~[Assumed Name Certificate]~~ must be filed as provided in this subparagraph.

(i) Unincorporated applicants. Unincorporated applicants using or planning to use an assumed name must file an assumed name certificate with the county clerk of the county where the proposed business is located in compliance with Texas Business and Commerce Code, §71.002 ~~[Chapter 71, as amended]~~. An applicant must provide a copy of the assumed name certificate that shows the filing stamp of the county clerk or, alternatively, a certified copy.

(ii) Incorporated applicants. Incorporated applicants using or planning to use an assumed name must file an assumed name certificate in compliance with Texas Business and Commerce Code, §71.002 ~~[Chapter 71, as amended]~~. Evidence of the filing bearing the filing stamp of the Office of the Texas Secretary of State must be submitted or, alternatively, a certified copy.

(2) Other required filings.

(A) Fingerprints.

(i) - (iv) (No change.)

(v) For individuals who have previously submitted fingerprints to another state agency (e.g., Texas Department of Savings and Mortgage Lending), fingerprints are still required to be submitted to the OCCC, as per Texas Finance Code, §14.152. Fingerprints cannot be disclosed to others, except as authorized by Texas Government Code, §560.002~~[, as amended]~~.

(B) - (D) (No change.)

(3) Subsequent applications (branch offices). If the applicant is currently licensed and filing an application for a new office, the applicant must provide the information that is unique to the new location including the Application for License, Application Questionnaire, Disclosure of Owners and Principal Parties, and a new Financial Statement as provided in paragraph (1)(J) of this section. The responsible person at the new location must be listed ~~[file a Personal Affidavit, Personal Questionnaire, and Employment History, if not previously filed]~~. Other information required by this section need not be filed if the information on file with the OCCC is current and valid.

*§83.303. Transfer of License.*

(a) Definition. As used in this subchapter ~~[chapter]~~, a "transfer of ownership" does not include a change in proportionate ownership as defined in §83.304 of this title (relating to Change in Form or Proportionate Ownership), except for changes meeting the requirements of §83.304(c)(2) of this title. Transfer of ownership includes the following:

(1) - (7) (No change.)

(b) (No change.)

(c) Filing requirements. An application for transfer of a regulated loan license must be submitted in a format prescribed by the commissioner at the date of filing and in accordance with the rules and instructions. The commissioner may accept the use of prescribed alternative formats to facilitate multistate uniformity of applications or in order to accept approved electronic

submissions. Appropriate fees must be filed with the transfer application, and the application for transfer must include the following:

(1) Required application information.

(A) New licensees filing transfers. The information required for new license applications under §83.302 of this title (relating to Filing of New Application) must be submitted by new licensees filing transfers. The instructions in §83.302 of this title are applicable to these filings. The applicant must also submit ~~[In addition,]~~ evidence of transfer of ownership as described in paragraph (2) of this subsection ~~[must also be submitted]~~.

(B) Existing licensees filing transfers. If the applicant is currently licensed and filing a transfer, the applicant must provide the information that is unique to the transfer event, including the Application for License, Application Questionnaire, Disclosure of Owners and Principal Parties, and a new Financial Statement, as provided in §83.302 of this title. The instructions in §83.302 of this title are applicable to these filings. The responsible person at the new location must be listed ~~[file a Personal Affidavit, Personal Questionnaire, and Employment History, if not previously filed]~~. Other information required by §83.302 of this title need not be filed if the information on file with the OCCC is current and valid. The applicant must also submit ~~[In addition,]~~ evidence of transfer of ownership as described in paragraph (2) of this subsection ~~[must also be submitted]~~.

(2) (No change.)

(d) Permission to operate. No business under the license may be conducted by any transferee until the application has been received, all applicable fees have been paid, and a request for permission to operate has been approved. In order to be considered, a permission to operate must be in writing. The [Additionally, the] transferor must grant the transferee the authority to operate under the transferor's license pending approval of the transferee's new license application. The transferor must accept full responsibility to any customer and to the OCCC for the licensed business for any acts of the transferee in connection with the operation of the lending business. The permission to operate must be submitted before the transferee takes control of the licensed operation. The agreement must set a definite period of time for the transferee to operate under the transferor's license. A request for permission to operate may be denied even if it contains all of the required information. Two companies may not simultaneously operate under a single license. If the OCCC grants a permission to operate, the transferor must cease operating under the authority of the license.

(e) (No change.)

*§83.304. Change in Form or Proportionate Ownership.*

(a) Organizational form. When any licensee or parent of a licensee desires to change the organizational form of its business (e.g., from corporation to limited partnership) that results in the exact same individuals or entities still owning the business, the licensee must advise the OCCC [commissioner] in writing of the change within 14 [10] calendar days by filing a license amendment and paying the

required fees as provided in §83.310 of this title (relating to Fees) [the appropriate transfer application documents as provided in §83.303 of this title (relating to Transfer of License)]. [In addition, the] The licensee must also submit a copy of the relevant portions of the organizational document for the new entity (e.g., articles of conversion and partnership agreement) addressing the ownership and management of the new entity.

(b) Merger. A merger of a licensee is a change of ownership that results in a new or different surviving entity and requires the filing of a transfer application pursuant to §83.303 of this title (relating to Transfer of License). If the [A] merger of the parent entity of a licensee that leads to the creation of a new entity or results in a different surviving parent entity, the licensee must advise the OCCC in writing of the change within 14 calendar days by filing a license amendment and paying the required fees as provided in §83.310 of this title [requires a transfer application pursuant to §83.303 of this title]. Mergers or transfers of other entities with a beneficial interest beyond the parent entity level only require notification within 14 [10] calendar days.

(c) Proportionate ownership.

(1) A change in proportionate ownership that results in the exact same owners still owning the business, and does not meet the requirements described in paragraph (2) of this subsection, does not require a transfer. Such a proportionate change in ownership does not require the filing of a transfer application, but does require notification when the cumulative ownership change to a single entity or individual amounts to 5% or greater. No

later than 14 [10] calendar days following the actual change, the licensee is required to notify the OCCC [commissioner] in writing of the change in proportionate ownership. This section does not apply to a publicly held corporation that has filed with the OCCC the most recent 10K or 10Q filing of the licensee or the publicly held parent corporation, although a transfer application may be required under §83.303 of this title.

(2) (No change.)

*§83.307. Processing of Application.*

(a) Initial review. A response to an incomplete application will ordinarily be made within 14 calendar [10 business] days of receipt [~~stating that the application is complete and accepted for filing or~~] stating that the application is incomplete and specifying the information required for acceptance.

(b) - (d) (No change.)

(e) Denial. If an application has been denied, the assessment fee will be refunded to the applicant. The investigation fee [~~and the fingerprint processing fee~~] in §83.310 of this title (relating to Fees) will be forfeited.

(f) (No change.)

*§83.309. License Status.*

(a) Inactivation of active license. A licensee may cease operating under a regulated loan license and choose to inactivate the license. A license may be inactivated by giving notice of the cessation of operations not less than 30 calendar days prior to the anticipated inactivation date. Notification must be filed on the

Amendment to a [Regulated Loan] License or an approved electronic submission as prescribed by the commissioner. The notice must include the new mailing address for the license, the effective date of the inactivation, and the fee for amending the license. A licensee must continue to pay the yearly renewal fees for an inactive license as outlined in §83.310 of this title (relating to Fees), or the license will expire.

(b) Activation of inactive license. A licensee may activate an inactive license by giving notice of the intended activation not less than 30 calendar days prior to the anticipated activation date. Notification must be filed on the Amendment to a [Regulated Loan] License or an approved electronic submission as prescribed by the commissioner. The notice must include the contemplated new address of the licensed office, the approximate date of activation, and the fee for amending the license as outlined in §83.310 of this title.

(c) Voluntary surrender of license. Subject to §83.406(b) of this title (relating to Effect of Revocation, Suspension, or Surrender of License), a licensee may voluntarily surrender a license by providing written notice of the cessation of operations, a request to surrender the license, and [~~by submitting~~] the license certificate. A voluntary surrender will result in cancellation of the license.

(d) (No change.)

*§83.310. Fees.*

(a) New licenses.

(1) (No change.)

ADOPT AMENDMENTS  
7 TAC, PART 5  
CHAPTER 83, SUBCHAPTER A  
Page 13 of 31

(2) Assessment fees. An assessment fee not to exceed [ef] \$600 per active license and not to exceed \$250 per inactive license is assessed each time an application for a new license is filed. This assessment fee will be refunded if the application is not approved.

(b) License transfers. An applicant must pay a \$200 nonrefundable [~~non-refundable~~] investigation fee for each license transfer.

~~[(c)] Fingerprint processing. A nonrefundable fee as prescribed by the commissioner will be charged to recover the costs of investigating each principal party's fingerprint record.]~~

(c) [(d)] License amendments. A fee of \$25 must be paid each time a licensee amends a license by inactivating a license, activating an inactive license, changing the assumed name of the licensee, changing the organizational form or proportionate ownership that results in the exact same individuals or entities still owning the business and does not require a transfer under §83.303(a)(4) or (5) of this title (relating to Transfer of License) or §83.304(c)(2) of this title (relating to Change in Form or Proportionate Ownership), providing notification of a new parent entity, or relocating an office.

(d) [(e)] License duplicates sent by mail. The fee for a license duplicate to be sent by mail is \$10.

(e) [(f)] Costs of hearings. The commissioner may assess the costs of an administrative appeal pursuant to Texas Finance Code, §14.207 for a hearing afforded under §83.307(d) of this title (relating to Processing of Application),

including the cost of the administrative law judge, the court reporter, and agency staff representing the OCCC at a hearing.

(f) [(g)] Annual renewal and assessment fees.

(1) An annual assessment fee is required for each license consisting of:

(A) a fee not to exceed [~~fixed fee of~~] \$600; and

(B) a volume fee based upon the type of lending activity conducted and the volume of business that does not exceed [~~consists of~~] an amount that is the greater of:

(i) \$0.03 per each \$1,000 transacted for license holders whose regulated operations consist of negotiating or brokering transactions on behalf of others in accordance with the most recent annual report filing (Schedule E, Brokered Loans) required by Texas Finance Code, §342.559;

(ii) \$0.03 per each \$1,000 advanced for license holders whose regulated operations occur within Texas Finance Code, Chapter 342, Subchapter F, in accordance with the most recent annual report filing (Schedule D, Lines 2 and 3) required by Texas Finance Code, §342.559; or

(iii) \$0.05 per each \$1,000 made or acquired under Texas Finance Code, Chapter 342, except amounts made or acquired by license holders covered by clauses (i) or (ii) of this subparagraph, or Texas Finance Code, Chapter 346, in accordance with the most recent annual report filing (Schedule D, Lines 1, 4, 6 and

ADOPT AMENDMENTS  
7 TAC, PART 5  
CHAPTER 83, SUBCHAPTER A  
Page 14 of 31

8) required by Texas Finance Code, §342.559.

(2) The annual assessment fee for an inactive license will not exceed [is] \$250.

(3) The maximum annual assessment fee for each licensed entity will not average more than \$1,200 per active licensed location.

*§83.311. Applications and Notices as Public Records.*

Once a license application or notice is filed with the OCCC, it becomes a "state record" under Texas Government Code, §441.180(11), and "public information" under Government Code, §552.002. Under Government Code, §441.190, §441.191 and §552.004, the original applications and notices must be preserved as "state records" and "public information" unless destroyed with the approval of the director and librarian of the State Archives and Library Commission under Government Code, §441.187. Under Government Code, §441.191, the OCCC may not return to the applicant or licensee any original documents associated with a regulated loan license application or notice [~~to the applicant or licensee~~]. An individual may request copies of a state record under the authority of the Texas Public Information Act, Government Code, Chapter 552.

*§83.403. Notice of Delinquency in Payment of Annual Assessment Fee.*

For purposes of Texas Finance Code, §342.155, notice of delinquency in the payment of an annual assessment fee is given when [~~upon the mailing of~~] the delinquency notice is sent to the licensee at

the email or mailing address on file with the OCCC [~~enclosed in a postpaid, properly addressed envelope, in a post office or official depository under the care and custody of the United States Postal Service~~].

*§83.404. Effect of Criminal History Information on Applicants and Licensees.*

(a) (No change.)

(b) Information on arrests, charges, indictments, and convictions. In responding to the information requests in the application, all arrests, charges, indictments, and convictions must be disclosed. The applicant must, to the extent possible, secure and provide to the commissioner reliable documents or testimony evidencing the information required to make a determination under subsection (d) of this section, including the recommendations of the prosecution, law enforcement, and correctional authorities. The applicant must also provide [~~furnish~~] proof in such form as may be required by the commissioner that the person [~~principal party of the applicant~~] has maintained a record of steady employment, has supported the person's [~~principal party's~~] dependents, and has otherwise maintained a record of good conduct. At a minimum, the person [~~principal party~~] must provide [~~furnish~~] proof that all outstanding court costs, supervision fees, fines, and restitution as may have been ordered have been paid. Failure to disclose arrests, charges, indictments, and convictions reflects negatively on an applicant's honesty and moral character.

(c) Factors in determining whether conviction relates to occupation of regulated lender. In determining whether a criminal

offense directly relates to the duties and responsibilities of holding a license, the commissioner will consider the following factors, as specified in Texas Occupations Code, §53.022:

(1) - (2) (No change.)

(3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person [~~principal-party~~] previously had been involved; and

(4) (No change.)

(d) Effect of criminal convictions on applicant or licensee.

(1) Effect of criminal convictions involving moral character. The commissioner may deny an application for a license, or suspend or revoke a license, if an applicant, licensee, or principal party [~~the applicant or licensee has a principal party who~~] has been convicted of any felony or of a crime involving moral character that is reasonably related to the applicant's or licensee's fitness to hold a license or to operate lawfully and fairly within Texas Finance Code, Chapter 342. For purposes of this section, the crimes listed in subparagraphs (A) - (H) of this paragraph are considered to be crimes involving moral character:

(A) - (H) (No change.)

(2) Effect of other criminal convictions. The commissioner may deny an application for a license or revoke an existing license, if an applicant, licensee, or a principal party of the applicant or licensee, has been convicted of a crime that directly

relates to the duties and responsibilities of a regulated lender that originates or obtains loans under Texas Finance Code, Chapter 342. Adverse action by the commissioner in response to a crime specified in this section is subject to mitigating factors and rights of the applicant or licensee, as found in §83.405 of this title (relating to Crimes Directly Related to Fitness for License; Mitigating Factors).

*§83.405. Crimes Directly Related to Fitness for License; Mitigating Factors.*

(a) Crimes directly related to fitness for license. Originating or obtaining loans made under Texas Finance Code, Chapter 342 involves or may involve making representations to borrowers regarding the terms of the loan, maintaining loan accounts, repossessing property without a breach of the peace, maintaining goods that have been repossessed, collecting due amounts in a legal manner, and foreclosing on real property in compliance with state and federal law. Consequently, crimes involving the misrepresentation of costs or benefits of a product or service, the improper handling of money or property entrusted to the person [~~individual~~], failure to file a governmental report or filing a false report, or the use or threat of force against another person are directly related to the duties and responsibilities of a license holder and may be grounds for denial, suspension, or revocation.

(b) Mitigating factors. In determining whether a conviction for a crime renders an applicant or a licensee unfit to be a license holder, the commissioner will consider, in addition to the factors listed in §83.404 of this title (relating to Effect of Criminal History Information on Applicants and

Licensees), the factors listed in paragraphs (1) - (6) of this subsection, as specified in Texas Occupations Code, §53.023:

(1) the extent and nature of the person's ~~[principal-party's]~~ past criminal activity;

(2) the age of the person when the crime was committed ~~[principal party at the time of the commission of the crime];~~

(3) the amount of time that has [the time] elapsed since the person's ~~[principal party's]~~ last criminal activity;

(4) the conduct and work activity of the person before and after ~~[principal party prior to and following]~~ the criminal activity;

(5) evidence of the person's [the ~~principal-party's~~] rehabilitation or rehabilitative effort while incarcerated or after release, or following the criminal activity if no time was served; and

(6) the person's ~~[principal-party's]~~ current circumstances relating to the present fitness of the applicant or licensee, evidence of which may include letters of recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person ~~[principal party]~~; the sheriff or chief of police in the community where the person ~~[principal party]~~ resides; and other persons in contact with the convicted person ~~[principal party]~~.

*§83.501. Maximum Interest Charge.*

(a) Precomputed loans. An authorized lender may charge the add-on rates authorized by Texas Finance Code,

§342.201(a) or the alternative simple interest rate authorized by Texas Finance Code, §342.201(d) or (e) as calculated by the scheduled installment earnings method, for precomputed loans that are either unsecured or secured by personal property. Prepaid interest in the form of points is not permitted, unless expressly authorized by statute ~~[(e.g., an administrative fee)]~~.

(b) Interest-bearing loans. An authorized lender may charge any rate of interest that does not exceed the maximum rate authorized by Texas Finance Code, §342.201(d) or (e) as calculated by the true daily earnings method or the scheduled installment earnings method, for an interest-bearing loan that is either unsecured or secured by personal property. Prepaid interest in the form of points is not permitted, unless expressly authorized by statute ~~[(e.g., an administrative loan fee)]~~.

(c) (No change.)

*§83.502. Treatment of Periods Less than a Full Month Before the First Installment Date.*

(a) (No change.)

(b) An authorized lender may use one of the methods listed in paragraphs (1) and (2) of this subsection in a regular transaction, when counting additional odd days in a first installment period, so long as the method utilized is consistently applied to all applicable loan transactions initiated by the authorized lender.

(1) (No change.)

(2) Regulation Z method. Under this method, the odd days should be determined

in accordance with Regulation Z - Truth in Lending, 12 C.F.R. Part 1026 [226], Appendix J. The odd days are determined by first ascertaining the one-month anniversary date preceding the first scheduled installment due date. After determining the one-month anniversary date preceding the first scheduled installment due date, the odd days are determined by counting the number of days between the date of the loan and the one-month anniversary date.

(c) (No change.)

*§83.503. Administrative Fee.*

An authorized lender may collect an administrative fee pursuant to Texas Finance Code, §342.201(f), on interest-bearing and precomputed loans.

(1) - (3) (No change.)

~~[(4) Interest may not be assessed, charged, or received on an administrative fee if the assessment causes the total amount of interest to exceed the maximum amount authorized under Texas Finance Code, Chapter 342.]~~

(4) [(5)] An administrative fee is a prepaid charge and may be contracted for, charged, or received in addition to the contractual interest charge authorized by Texas Finance Code, §342.201(a), (d), or (e).

*§83.504. Default Charges.*

(a) - (c) (No change.)

(d) Default period. A default charge may not be assessed until after the 10th day after the installment due date. For example, if the

installment due date is the 1st of the month, a default charge may not be assessed until the 12th of the month.

(e) (No change.)

(f) Pyramiding prohibited. An authorized lender seeking to assess additional interest for default on a precomputed loan under Texas Finance Code, §342.203 or §342.206 must comply with the prohibition on the pyramiding of late charges provided by ~~[set forth in]~~ the Federal Trade Commission's [Commission] Credit Practices Rule at 16 C.F.R. §444.4 or in Regulation AA, 12 C.F.R. Part 227, promulgated by the Board of Governors of the Federal Reserve System, as applicable.

(g) - (h) (No change.)

*§83.505. Deferment.*

(a) - (c) (No change.)

(d) Deferment notice. Each deferment must be recorded ~~[noted]~~ on the account record at the time the deferment is made. A written notice containing the conditions of the deferment must be provided ~~[furnished]~~ to the borrower. The deferment notice must include the name of the lender, the name of the borrower, the loan number, the date of the deferment, the installment or installments being deferred, the deferment period, the amount of the deferment charge, the balance on the account, and the date and amount of the next installment due. The notice must be signed by the borrower to indicate ~~[A signature of the borrower denotes]~~ the borrower's agreement to a bilateral deferment.

(e) Computation of deferment charge for regular transaction. Each deferment charge on a regular loan transaction must be computed in accordance with the method prescribed by the loan contract. If the loan contract does not provide for a deferment charge, then no deferment charge may be assessed or collected. A lender may employ any of the prescribed computational methods described in this subsection so long as the computational method employed is consistently utilized throughout the term of the loan. An authorized lender may calculate the deferment charge using the balance method or the date method.

(1) Balance method. The balance method is used to determine the difference between the refund of unearned interest as of the due date of the last entirely paid installment and the due date of the next succeeding unpaid installment.

(A) (No change.)

(B) Calculation for deferment after first installment. The first step in determining the deferment charge using the balance method for any installment after the first installment is to determine the deferment period.

(i) - (iv) (No change.)

(v) Example of deferment calculation. The terms of a precomputed Texas Finance Code, §342.201(e) loan are as follows: Date of loan: 09/01/2015 [09/01/2009]; First installment due date: 10/01/2015 [10/01/2009]; Cash Advance: \$2,356.21; Finance Charge (no administrative fee): \$1,243.79; Total of Payments: \$3,600; Term: 36 months; Regular installment amount: \$100; Refunding method: Scheduled installment

earnings method; and Annual Percentage Rate: 30%. If an authorized lender agrees to a deferment roughly six months into the contract and the remaining precomputed balance is \$3,095 (no adjustments are necessary), to determine the "last entirely paid installment," the authorized lender must divide the precomputed balance by the regular installment amount (\$3,095 divided by \$100 = 30.95). Because the entire amount of the installment must be unpaid, the result must be rounded to the next lowest whole number (in this case, 30). For calculation purposes, there are 30 remaining installments and 6 installments have been made. In this case, the 7th scheduled installment is being deferred. The deferment charge is calculated by determining the scheduled interest charge for the deferment period, or from the last entirely paid installment to the "first entirely unpaid installment" (the 6th entirely paid scheduled installment) to the "next succeeding unpaid installment" (7th scheduled installment). The "next succeeding unpaid installment" is determined by subtracting one unit period from the "last entirely paid installment" ( $30 - 1 = 29$ ). The calculation of the deferment charge is the difference between the interest refund of the 6th entirely paid installment ( $36 - 30$ ) and the 7th first entirely unpaid installment ( $36 - 29$ ). This difference would be \$53.28.

(2) (No change.)

(f) - (j) (No change.)

*§83.601. Authorized Charges.*

(a) An authorized lender may contract for, charge, or collect on a loan made pursuant to Texas Finance Code, Chapter 342, Subchapter F:

ADOPT AMENDMENTS  
7 TAC, PART 5  
CHAPTER 83, SUBCHAPTER A  
Page 19 of 31

(1) - (5) (No change.)

(6) interest after maturity [~~that does not exceed the Texas Finance Code, Chapter 303, Subchapter A rate~~].

(b) (No change.)

*§83.602. Default Charges.*

(a) - (d) (No change.)

(e) Default period. A default charge may not be assessed until after the 10th day after the installment due date. For example, if the installment due date is the 1st of the month, a default charge may not be assessed until the 12th of the month.

(f) Pyramiding prohibited. An authorized lender seeking to assess additional interest for default on a precomputed loan under Texas Finance Code, §342.257 must comply with the prohibition on the pyramiding of late charges provided by [~~set forth in~~] the Federal Trade Commission's [~~Commission~~] Credit Practices Rule at 16 C.F.R. §444.4 or in Regulation AA, 12 C.F.R. Part 227, promulgated by the Board of Governors of the Federal Reserve System, as applicable.

(g) - (h) (No change.)

*§83.603. Deferment Charges.*

The rules for deferment charges applicable to Texas Finance Code, Chapter 342, Subchapter E loans provided by [~~as set forth in~~] §83.505 of this title (relating to Deferment) are also applicable to loans made under Subchapter F.

*§83.604. Payday Loans; Deferred Presentment Transactions.*

(a) Definitions. For the purposes of this subchapter [~~chapter~~], the following words and terms, when used in this subchapter [~~chapter~~], will have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Payday loan or deferred presentment transaction--

(A) A transaction in which:

(i) a cash advance in whole or in part is made in exchange for a personal check or authorization to debit a deposit account;

(ii) - (iii) (No change.)

(B) (No change.)

(b) Authorization. A licensee may engage in a payday loan or deferred presentment transaction under this subchapter [~~chapter~~] and subject to the provisions of Texas Finance Code, Chapter 342, Subchapter F. A payday loan or deferred presentment transaction is a loan of money. The check given in the transaction may serve as security for the payment of the loan. A person who negotiates, arranges, or acts as an agent for an authorized lender in a payday loan or deferred presentment transaction that has an effective annual rate of greater than 10% is required to be licensed.

(c) Maximum charge. A licensee may charge an amount that does not exceed the

ADOPT AMENDMENTS  
7 TAC, PART 5  
CHAPTER 83, SUBCHAPTER A  
Page 20 of 31

rates authorized in Texas Finance Code, §§342.251 - 342.259. The chart in the following figure provides examples of the maximum authorized rates for loans made under Texas Finance Code, Chapter 342, Subchapter F. Texas Finance Code, §342.254 which prohibits other charges applies to this section.

Figure: 7 TAC §83.604(c) (*See attached.*)

(d) - (e) (No change.)

(f) Conditions. A lender may accept a check to secure payment of a payday loan if the lender complies with paragraphs (1) and (2) of this subsection.

(1) (No change.)

(2) Collection practices. A payday loan constitutes a credit relationship for all purposes, including collection. If a borrower defaults, including the return of the check to the licensee from a financial institution due to insufficient funds, closed account, or stop payment order, the licensee may pursue all legally available civil means to collect the debt. Collection practices must be in accordance with this subchapter [chapter] and with the Texas Debt Collection Practices Act, Texas Finance Code, Chapter 392.

(3) (No change.)

§83.606. *Maximum Term and Maximum Installment Account Handling Charge.*

(a) - (e) (No change.)

(f) Maximum installment account handling charge for loan contract using the

scheduled installment earnings method or the true daily earnings method.

(1) - (5) (No change.)

(6) Effective rate for regular transactions and irregular transactions.

(A) (No change.)

(B) Irregular transaction. For an irregular transaction using the scheduled installment earnings method or true daily earnings method, the maximum effective rate is determined by taking the closest monthly effective rate assuming the loan contract was payable in substantially equal successive monthly installments beginning [being] one month from the date of the loan.

(i) - (iii) (No change.)

(g) - (i) (No change.)

§83.701. *Maximum Interest Charge.*

(a) - (b) (No change.)

(c) Method of calculation. An authorized lender making loans under Texas Finance Code, §342.301(c) may calculate the rate and amount of interest by any method of calculation, as long as the amount of interest charged does not exceed the maximum rate or amount of interest provided by [set forth in] Texas Finance Code, §342.301, calculated using the specified earnings methods contained in Texas Finance Code, §342.301.

§83.702. *Treatment of Periods Less than a Full Month.*

(a) (No change.)

(b) An authorized lender may use one of the methods listed below, in a regular transaction, when counting additional odd days in a first installment period, so long as the method utilized is consistently applied to all applicable loan transactions initiated by the authorized lender.

(1) (No change.)

(2) Regulation Z method. Under this method, the odd days should be determined in accordance with Regulation Z - Truth in Lending, 12 C.F.R. Part 1026 [226], Appendix J. The odd days are determined by first ascertaining the one-month anniversary date preceding the first scheduled installment due date. After determining the one-month anniversary date preceding the first scheduled installment due date, the odd days are determined by counting the number of days between the date of the loan and the one-month anniversary date.

(c) (No change.)

*§83.703. Default Charges.*

(a) - (c) (No change.)

(d) Default period. A default charge may not be assessed until after the 10th day after the installment due date. For example, if the installment due date is the 1st of the month, a default charge may not be assessed until the 12th of the month.

(e) (No change.)

(f) Pyramiding prohibited. An authorized lender seeking to assess additional interest for default on a precomputed secondary mortgage loan under Texas Finance Code, §342.302 or §342.305 must comply with the

prohibition on the pyramiding of late charges provided by [~~set forth in~~] the Federal Trade Commission's [Commission] Credit Practices Rule at 16 C.F.R. §444.4 or in Regulation AA, 12 C.F.R. Part 227, promulgated by the Board of Governors of the Federal Reserve System, as applicable.

*§83.704. Deferment.*

(a) - (b) (No change.)

(c) Deferment notice. Each deferment must be recorded [~~noted~~] on the account record at the time the deferment is made. A written notice containing the conditions of the deferment must be provided [~~furnished~~] to the borrower. The deferment notice must include the name of the lender, the name of the borrower, the loan number, the date of the deferment, the installment or installments being deferred, the deferment period, the amount of the deferment charge, the balance on the account, and the date and amount of the next installment due. The notice must be signed by the borrower to indicate [~~A signature of the borrower denotes~~] the borrower's agreement to a bilateral deferment.

(d) Computation of deferment charge for regular transaction. Each deferment charge on a regular loan transaction must be computed in accordance with the method prescribed by the loan contract. If the loan contract does not provide for a deferment charge, then no deferment charge may be assessed or collected. A lender may employ any of the prescribed computational methods described in this subsection so long as the computational method employed is consistently utilized throughout the term of the loan. An authorized lender may calculate

the deferment charge using the balance method or the date method.

(1) Balance method. The balance method is used to determine the difference between the refund of unearned interest as of the due date of the last entirely paid installment and the due date of the next succeeding unpaid installment.

(A) (No change.)

(B) Calculation for deferment after first installment. The first step in determining the deferment charge using the balance method for any installment after the first installment is to determine the deferment period.

(i) - (iv) (No change.)

(v) Example of deferment calculation. The terms of a precomputed Texas Finance Code, §342.301 loan are as follows: Date of loan: 09/01/2015 [09/01/2009]; First payment due date: 10/01/2015 [10/01/2009]; Cash Advance: \$2,766.48; Finance Charge: \$833.52; Total of Payments: \$3,600; Term: 36 months; Monthly installment: \$100; Refunding method: Sum of the periodic balances; and Annual Percentage Rate: 18%. If an authorized lender agrees to a deferment roughly six months into the contract and the remaining precomputed balance is \$3,095 (no adjustments are necessary), to determine the "last entirely paid installment," the authorized lender must divide the precomputed balance by the regular installment amount (\$3,095 divided by \$100 = 30.95). Because the entire amount of the installment must be unpaid, the result must be rounded to the next lowest whole number (in this case, 30). For calculation purposes,

there are 30 remaining installments and 6 installments have been made. In this case, the 7th scheduled installment is being deferred. The deferment charge is calculated by determining the scheduled interest charge for the deferment period, or from the last entirely paid installment to the "first entirely unpaid installment" (the 6th entirely paid scheduled installment) to the "next succeeding unpaid installment" (7th scheduled installment). The "next succeeding unpaid installment" is determined by subtracting one unit period from the "last entirely paid installment" ( $30 - 1 = 29$ ). The calculation of the deferment charge is the difference between the interest refund of the 6th entirely paid installment ( $36 - 30$ ) and the 7th first entirely unpaid installment ( $36 - 29$ ). This difference would be \$37.54. A scheduled installment earnings refund method would yield a slightly different result of \$36.69.

(2) (No change.)

(e) - (i) (No change.)

*§83.708. Balloon Payments.*

Balloon payments are authorized in a secondary mortgage loan unless prohibited by other applicable law (for example, the high cost mortgage rules of Regulation Z - Truth in Lending, 12 C.F.R. §1026.32(d)(1) [§226.32(d)(1)], and Texas Finance Code, §343.202).

*§83.751. Scope.*

(a) Scope. This division [subchapter] applies to all precomputed loan transactions made pursuant to Texas Finance Code, Chapter 342, Subchapters E, F, and G. This division [subchapter] is inapplicable to

interest-bearing loans made under Texas Finance Code, Chapter 342.

(b) Refund methods for Chapter 342, Subchapter F and G loans. The chosen method of determining refunds must be contracted for in the loan agreement. An authorized lender may utilize one of the following methods of determining the amount of a refund:

(1) (No change.)

(2) the scheduled installment earnings method; or

(3) (No change.)

(c) Refund method for Chapter 342, Subchapter E loans. An authorized lender may not use the sum of the periodic [period] balances method for a Subchapter E loan.

*§83.752. Specific Application to Subchapter E and G Loans.*

(a) (No change.)

(b) Interest or fees not subject to refund.

(1) - (3) (No change.)

*§83.754. Refund of Precomputed Interest for Subchapter G Loans.*

(a) Regular transactions.

(1) (No change.)

(2) If prepayment in full is made by cash, renewal, or otherwise, before the first installment due date, the authorized lender must compute the refund as provided by this paragraph.

(A) (No change.)

(B) If the first installment due date is 16 days or greater, but less than one month[5] from the date of the loan, the lender may retain for each elapsed day between the date of the loan and prepayment before the first installment due date, 1/30th of the interest which could be retained if the first installment period were one month and the loan was prepaid in full on the first installment due date.

(C) (No change.)

(b) - (c) (No change.)

*§83.756. Refund of Precomputed Interest for Subchapter F Loans; Prepayment in Full Before the First Installment Due Date.*

(a) If the first installment due date is one month or less from the date of the loan, the authorized lender may retain for each elapsed day between the date of the loan and prepayment before the first installment due date, 1/30th of the installment account handling charge that [~~and acquisition charge that is subject to being refunded and~~] could be retained if the first installment period were one month and the loan was prepaid in full on the first installment due date. All interest in excess of such amount must be refunded or credited to the borrower.

(b) - (c) (No change.)

*§83.757. Refund of Precomputed Interest for Subchapter F Loans; Prepayment in Full After the First Installment Due Date and Before the Final Installment Due Date.*

(a) If prepayment in full is made by cash, renewal, or otherwise, the authorized

ADOPT AMENDMENTS  
7 TAC, PART 5  
CHAPTER 83, SUBCHAPTER A  
Page 24 of 31

lender must refund or credit to the borrower the unearned installment account handling charge ~~[and acquisition charge subject to refund]~~ by the refund method authorized by §83.751(b) of this title (relating to Scope) and identified in the loan agreement as the chosen refund method. One day earned into a month will allow the lender to earn the interest applicable to the full month.

(b) (No change.)

*§83.801. Definitions.*

Words and terms used in this subchapter ~~[chapter]~~ that are defined in Texas Finance Code, Chapter 342, have the meanings as defined in Chapter 342. The following words and terms will have the following meanings unless the context clearly indicates otherwise.

(1) - (3) (No change.)

(4) Credit insurance--Includes credit life insurance, credit accident and health insurance, and credit involuntary unemployment insurance.

(5) - (6) (No change.)

(7) Gap waiver agreement--An agreement that eliminates or reduces the deficiency when the proceeds from the borrower's insurance policy do not cover the unpaid net balance after the motor vehicle has suffered a total loss or constructive total loss. The unpaid net balance on the loan does not include:

(A) - (F) (No change.)

(8) (No change.)

*§83.805. Authorized Credit Insurance.*

(a) - (b) (No change.)

(c) Credit involuntary ~~[Involuntary]~~ unemployment insurance must be written in compliance with Texas Insurance Code, Chapter 3501, and any regulations issued by the Texas Department of Insurance under the authority of that chapter.

*§83.809. Prepayment of Loan from Insurance Proceeds.*

(a) Personal property insurance. If a loan is prepaid in full from the proceeds of a personal property insurance policy following a personal property loss, the refund should be computed as follows:

(1) - (2) (No change.)

(3) Total or partial motor vehicle insurance loss.

(A) - (B) (No change.)

(C) A personal property insurance premium refund must be computed as of the date the settlement check is received by the licensee. A motor vehicle insurance premium refund must be computed as prescribed by the Automobile Rules and Rating Manual.

(b) - (c) (No change.)

*§83.828. Files and Records Required (Subchapter E and F Lenders).*

Each licensee must maintain records with respect to each loan made under Texas Finance Code, Chapter 342, Subchapters E and F, and make those records available for

examination. The records required by this section may be maintained by using either a paper or manual recordkeeping system, electronic recordkeeping system, optically imaged recordkeeping system, or a combination of the preceding types of systems, unless otherwise specified by statute or regulation. If federal law requirements for record retention are different from the provisions contained in this section, the federal law requirements prevail only to the extent of the conflict with the provisions of this section.

(1) Loan register. Each licensee must maintain a loan register, containing the information required by subparagraphs (A) - (D) of this paragraph, for each Texas Finance Code, Chapter 342, Subchapter E and F loan made by the licensee. The loan register can be maintained either as a paper or an electronic record. If the loan register is maintained as an electronic record, the licensee must be able to sort, generate, and print, as a separate record, the loan register for each day the licensee originated or acquired Chapter 342, Subchapter E and F loans. A licensee may incorporate the loan register as part of the record of daily transactions required by paragraph (7) of this section if the loan register is a separate and distinct section of the daily report. If the loan register is maintained as a paper record, the loan register must be currently maintained. A licensee may file, in chronological order, copies of any loan document or form prepared at the time a loan is made reflecting the information provided [~~set forth~~] in subparagraphs (A) - (D) of this paragraph to serve as a loan register. A loan register must contain the following information:

(A) - (D) (No change.)

(2) (No change.)

(3) Borrower's account record (including payment and collection contact history). A separate paper or electronic record must be maintained for the account of each borrower. The paper or electronic borrower's account record must be readily available by reference to either a name or loan number. The borrower's account record must contain at least the following information on each loan:

(A) - (G) (No change.)

(H) Total interest charges and other authorized charges itemized to show:

(i) - (ii) (No change.)

(I) Amount of premium charges for insurance, gap waiver agreements, and authorized ancillary products itemized to show:

(i) - (v) (No change.)

(vi) credit involuntary unemployment insurance;

(vii) - (viii) (No change.)

(J) - (L) (No change.)

(M) Refunds of unearned interest, insurance charges, gap waiver agreements, and authorized ancillary products, if any. A licensee is responsible for substantiating final entries and that refunds were paid to the borrower. Refund amounts must be itemized to show:

(i) (No change.)

ADOPT AMENDMENTS  
7 TAC, PART 5  
CHAPTER 83, SUBCHAPTER A  
Page 26 of 31

(ii) credit life, credit accident and health, credit involuntary unemployment, collateral protection interest (single-interest or dual-interest coverage), and personal property insurance charges refunded, showing separately the refund applicable to each separate insurance policy or coverage;

(iii) - (v) (No change.)

(N) - (O) (No change.)

(4) - (5) (No change.)

(6) Official fees records (Subchapter E loans only).

(A) - (D) (No change.)

(E) Continuing notices of security interest. Continuation of liens will be dependent upon conformity with the following:

(i) If a licensee desires to continue a notice of security interest on which a maturity date was not initially established on the financing statement, a continuation statement must be filed no later than 60 days after the maturity date and no sooner than six months prior to the maturity date. A licensee may exercise one of the following options when "continuing" a lien:

(I) (No change.)

(II) The filing fee may be collected directly from the borrower within the period for filing prescribed by Texas Business and Commerce Code, §9.515; [or]

(III) - (IV) (No change.)

(ii) (No change.)

(7) (No change.)

(8) Record of loans in litigation and repossession.

(A) (No change.)

(B) All loan records, account cards, correspondence, and any other pertinent information must be maintained in the borrower's account folders or files. The file must include the following applicable items:

(i) - (v) (No change.)

(vi) When the licensee, acting as a secured party, takes possession of the collateral and disposes of it at a public or private sale as provided under Texas Business and Commerce Code, Chapter 9, and the sale is not a judicial sale, the file must include written evidence substantiating the commercial reasonableness of all aspects of the sale of the collateral, and of its preparation for sale, if any. These documents should include copies of any invoices or receipts, condition reports indicating the condition of the collateral, notice of intended disposition sent to the borrower and any other obligor or the waiver of the notice signed after default by the borrower and other obligors, and evidence of fair sale of the collateral. One means of providing evidence of fair sale or the commercial reasonableness of sale is the taking of not less than three bona fide bids. Bids must disclose:

(I) [the] names and addresses of the bidders;

ADOPT AMENDMENTS  
7 TAC, PART 5  
CHAPTER 83, SUBCHAPTER A  
Page 27 of 31

(II) name [~~(vii) Name~~]  
and address of the purchaser of the  
repossessed collateral; and

(III) after [~~(viii) After~~] the  
disposition of the collateral, a copy of any  
explanation of calculation of surplus or  
deficiency sent to the borrower.

(9) Insurance loss registers. Each  
licensee must maintain a register, paper or  
electronic, reflecting information on credit  
life, credit accident and health, personal  
property, credit involuntary unemployment,  
and collateral protection insurance claims  
whether paid or denied by the insurance  
carrier.

(A) Credit life [~~Life~~] insurance  
claims. The register pertaining to credit life  
insurance claims must show the name of the  
borrower, the account number, and the date  
of death.

(B) Credit accident [~~Accident~~]  
and health insurance claims. The register  
pertaining to credit accident and health  
insurance claims must show the name of the  
borrower, the account number, and the date  
of the initial filing of a claim for any  
continuous period of disability.

(C) (No change.)

(D) Credit involuntary  
[~~Involuntary~~] unemployment insurance  
claims. The register pertaining to credit  
involuntary unemployment insurance claims  
must show the name of the borrower, the  
account number, and the date of the initial  
filing of the claim.

(E) (No change.)

(10) Loan records and documents  
file.

(A) Generally. A licensee must  
maintain a loan records and documents file  
for each individual borrower. The loan  
records and documents file must contain all  
necessary records and documents to  
evidence compliance with applicable state  
and federal laws and regulations, including  
the Equal Credit Opportunity Act and the  
Truth in Lending Act. The loan records and  
documents file must include copies of the  
following records or documents:

(i) - (ix) (No change.)

(x) any written or recorded  
records relating to repossessions, legal  
actions, or foreclosure actions regarding  
[~~relating to~~] the borrower or the borrower's  
collateral securing the loan; and

(xi) any separate disclosures  
that are required by federal or state law,  
such as the notice to cosigner required by  
the Federal Trade Commission's Credit  
Practices Rule [~~Trade regulation~~], 16 C.F.R.  
§444.3.

(B) Supplemental insurance  
records. Each licensee must maintain in the  
borrower's file supplemental records  
supporting the settlement or denials of  
claims reported in the registers. If the reason  
for the denial of a credit life insurance or a  
credit [~~an~~] accident and health insurance  
claim is based upon the medical records of  
the borrower, supplemental records  
supporting the denial of the claim must be  
forwarded to the commissioner upon  
request.

(i) Credit life [Life] insurance claims. The supplemental insurance records for credit life insurance claims must include the death certificate or other written records relating to the death of the borrower; proof of loss or claim form that discloses the amount of indebtedness at the time of death; check copies or electronic payment receipts that reflect the gross amount of the claim paid, including the amount of insurance benefits paid to beneficiaries other than the licensee which is in excess of the net amount necessary to pay the indebtedness; and the amount that is paid to beneficiaries other than the licensee.

(ii) Credit accident [Accident] and health insurance claims. The supplemental insurance records for credit accident and health insurance claims must include any written records relating to the disability, including statements from the physician, employer, and borrower; the proof of loss or claim form filed by the borrower; and copies of the checks or electronic payment receipts reflecting disability payments paid by the insurance carrier.

(iii) (No change.)

(iv) Credit involuntary [Involuntary] unemployment insurance claims. The supplemental insurance records for credit involuntary unemployment insurance claims must include any written document relating to the termination, layoff, or dismissal of the borrower; the proof of loss or claim form filed by the borrower; copies of the checks or electronic payment receipts reflecting the payment of the claim by the insurance carrier; and any other pertinent written record relating to the credit involuntary unemployment insurance claim.

(v) (No change.)

(C) (No change.)

(11) (No change.)

(12) Adverse action records. Each licensee must maintain adverse action records regarding all applications relating to Texas Finance Code, Chapter 342 loans. Adverse action records must be maintained according to the record retention requirements contained in Regulation B, Equal Credit Opportunity Act, 12 C.F.R. §1002.12(b) [~~§202.12(b)~~, as amended]. The current retention periods are 25 months for consumer credit and 12 months for business credit. These records include the loan application; any written or recorded information used in evaluating the application; the adverse action notice, if required; notice of incompleteness, if applicable; and counteroffer notice, if applicable.

(13) Compliance [Official correspondence] file. Each licensee must maintain a separate file for all communications from the OCCC and for copies of correspondence and reports addressed to the OCCC [commissioner]. This file must include, at a minimum, electronic or paper copies of the current Texas Finance Code, Chapter 342, the last three examination reports, correspondence relating to compliance, compliance bulletins issued in the last two years, and current rules issued by the commissioner. A licensee will be considered to have maintained copies of the Texas Finance Code and current rules by having access to the websites containing the official versions of the current Texas Finance Code and the current Texas Administrative Code. [This must include a

~~copy of the Texas Credit Title and applicable regulations, electronic or paper hard-copy version, and examination reports issued by the commissioner.]~~

(14) Retention and availability of records. All required books and records must be available for inspection at any time by OCCC staff, and must be retained for a period of four years from the date of the loan, or two years from the date of the final entry made thereon, whichever is later. All obligations authenticated by the borrower, including promissory notes and security agreements, must be kept at an office in the state designated by the licensee or made available in the state, except when transferred under an agreement that gives the OCCC [eommissioner] access to the documents. Copies of loan documents, financing statements, loan applications, records of insurance policies issued by or through the licensee in connection with the loan, and books and records required by this section must be maintained at [in] the licensed location or be made available at some location in the state designated by the licensee in writing to the OCCC [eommissioner]. Documents may be maintained out of state if the licensee has in writing acknowledged responsibility for either making the records available within the state for examination or by acknowledging responsibility for additional examination costs associated with examinations conducted out of state.

*§83.829. Files and Records Required (Subchapter G Lenders).*

Each licensee must maintain records with respect to each loan made under Texas Finance Code, Chapter 342, Subchapter G and each home equity loan made under

Texas Constitution, Article XVI, Section 50, and make those records available for examination. The records required by this section may be maintained by using either a paper or manual recordkeeping system, electronic recordkeeping system, optically imaged recordkeeping system, or a combination of the preceding types of systems, unless otherwise specified by statute or regulation. If federal law requirements for record retention are different from the provisions contained in this section, the federal law requirements prevail only to the extent of the conflict with the provisions of this section. The records required by this section must be retained and made available for inspection in the same manner as that specified in §83.828(14) of this title (relating to Files and Records Required (Subchapter E and F Lenders)).

(1) (No change.)

(2) Record of individual borrower's account. A separate record must be maintained for the account of each borrower and the record must contain at least the following information on each loan:

(A) - (J) (No change.)

(K) In the event a loan is prepaid in full, refunds of unearned charges and unearned insurance premiums may be required. A licensee is responsible for substantiating final entries and for substantiating that refunds due were paid to borrowers. Refund amounts must be itemized to show:

(i) (No change.)

(ii) credit life, credit accident and health, and personal property insurance

charges refunded, showing separately the refund applicable to each separate insurance policy or coverage;

(L) - (M) (No change.)

(3) - (4) (No change.)

(5) Loan records and documents.

(A) (No change.)

(B) Supplemental insurance records. Each licensee must maintain in the borrower's file supplemental records supporting the settlement or denials of claims reported in the registers. If the reason for the denial of a credit life insurance or a credit [an] accident and health insurance claim is based upon the medical records of the borrower, supplemental records supporting the denial of the claim must be forwarded to the commissioner upon request. A licensee must maintain supplemental insurance records in a form substantially similar to §83.828(10)(B)(i) - (iii) of this title.

§83.831. *Review of Electronic Recordkeeping Systems and Optical Imaging Systems.*

(a) (No change.)

(b) Software review for Chapter 342, Subchapter E or F licensees. A licensee making, transacting, or negotiating consumer loans subject to Texas Finance Code, Chapter 342, Subchapter E or F must use a reviewed software system unless the licensee utilizes either a manual recordkeeping system that complies with §83.828 of this title or a proprietary software system that is not sold or distributed to other

licensees, unless the other licensees are affiliates of the licensee operating the proprietary system. A list of reviewed non-proprietary software systems that may be used by licensees will be maintained on the OCCC's [~~Office of Consumer Credit Commissioner's~~] website. A licensee or software vendor must provide documentation of the non-proprietary software system to the OCCC [~~commissioner~~] that explains how the required information is maintained within the system.

(c) - (f) (No change.)

§83.836. *Follow-Up Examination Fees.*

If a follow-up examination visit is required within nine months after a written deficiency report has been given as a result of a failure to comply with Texas Finance Code, Chapter 342, this subchapter [~~chapter~~], or the special instruction section of the examination report, an examination fee at the hourly rate of \$100 per examiner may be assessed.

§83.837. *Disclosure when Automobile Club Membership Offered in Connection with Loan.*

(a) (No change.)

(b) The text of the disclosure must be set in an easily readable typeface. Typefaces considered to be easily readable include Times, Scala, Caslon, Century Schoolbook, Helvetica, Arial, and Garamond.

(c) - (e) (No change.)

*§83.851. Duplication of Loans.*

(a) (No change.)

(b) Married applicants, who under the authority of Regulation B, 12 C.F.R. §1002.11(c) [~~C.F.R. §202.11(e)~~], voluntarily apply for and maintain separate accounts, and who have the ability to repay the obligation, will not violate the prohibition on duplicate loans.

(c) (No change.)

*§83.858. Full Disclosure Requirements--  
Open-End and Revolving Loan Plans.*

(a) Any advertisement of an open-end or revolving loan plan that states any of the specific terms of that plan, must also clearly and conspicuously state [~~set forth~~] the following items:

(1) - (5) (No change.)

(b) For purposes of this section, compliance by an authorized lender with the federal Truth in Lending Act and its implementing regulations relating to open-end credit transactions will constitute compliance with the Texas Credit Title.

**Certification**

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on June 20, 2014.

Sealy Hutchings  
General Counsel  
Office of Consumer Credit Commissioner

Figure: 7 TAC \$83.604(c)

Amount		\$100.00			\$150.00			\$200.00			\$250.00			\$300.00			\$350.00		
Financed:		Term - days	Finance Charge	APR	Term - days	Finance Charge	APR	Term - days	Finance Charge	APR	Term - days	Finance Charge	APR	Term - days	Finance Charge	APR	Term - days	Finance Charge	APR
		7	\$10.93	569.92%		\$16.40	570.10%		\$21.87	570.18%		\$27.33	570.03%		\$32.80	570.10%		\$38.27	570.14%
		8	\$11.07	505.07%		\$16.60	504.92%		\$22.13	504.84%		\$27.67	504.98%		\$33.20	504.92%		\$38.73	504.87%
		9	\$11.20	454.22%		\$16.80	454.22%		\$22.40	454.22%		\$28.00	454.22%		\$33.60	454.22%		\$39.20	454.22%
		10	\$11.33	413.67%		\$17.00	413.67%		\$22.67	413.73%		\$28.33	413.62%		\$34.00	413.67%		\$39.67	413.70%
		11	\$11.47	380.60%		\$17.20	380.48%		\$22.93	380.43%		\$28.67	380.53%		\$34.40	380.48%		\$40.13	380.45%
		12	\$11.60	352.83%		\$17.40	352.83%		\$23.20	352.83%		\$29.00	352.83%		\$34.80	352.83%		\$40.60	352.83%
		13	\$11.73	329.34%		\$17.60	329.44%		\$23.47	329.48%		\$29.33	329.40%		\$35.20	329.44%		\$41.07	329.46%
		14	\$11.87	309.47%		\$17.80	309.38%		\$23.73	309.34%		\$29.67	309.42%		\$35.60	309.38%		\$41.53	309.36%
		15	\$12.00	292.00%		\$18.00	292.00%		\$24.00	292.00%		\$30.00	292.00%		\$36.00	292.00%		\$42.00	292.00%
		16	\$12.13	276.72%		\$18.20	276.79%		\$24.27	276.83%		\$30.33	276.76%		\$36.40	276.79%		\$42.47	276.81%
		17	\$12.27	263.44%		\$18.40	263.37%		\$24.53	263.34%		\$30.67	263.40%		\$36.80	263.37%		\$42.93	263.35%
		18	\$12.40	251.44%		\$18.60	251.44%		\$24.80	251.44%		\$31.00	251.44%		\$37.20	251.44%		\$43.40	251.44%
		19	\$12.53	240.71%		\$18.80	240.77%		\$25.07	240.80%		\$31.33	240.75%		\$37.60	240.77%		\$43.87	240.79%
		20	\$12.67	231.23%		\$19.00	231.17%		\$25.33	231.14%		\$31.67	231.19%		\$38.00	231.17%		\$44.33	231.15%
		21	\$12.80	222.48%		\$19.20	222.48%		\$25.60	222.48%		\$32.00	222.48%		\$38.40	222.48%		\$44.80	222.48%
		22	\$12.93	214.52%		\$19.40	214.58%		\$25.87	214.60%		\$32.33	214.55%		\$38.80	214.58%		\$45.27	214.59%
		23	\$13.07	207.42%		\$19.60	207.36%		\$26.13	207.34%		\$32.67	207.38%		\$39.20	207.36%		\$45.73	207.35%
		24	\$13.20	200.75%		\$19.80	200.75%		\$26.40	200.75%		\$33.00	200.75%		\$39.60	200.75%		\$46.20	200.75%
		25	\$13.33	194.62%		\$20.00	194.67%		\$26.67	194.69%		\$33.33	194.65%		\$40.00	194.67%		\$46.67	194.68%
		26	\$13.47	189.10%		\$20.20	189.05%		\$26.93	189.03%		\$33.67	189.07%		\$40.40	189.05%		\$47.13	189.04%
		27	\$13.60	183.85%		\$20.40	183.85%		\$27.20	183.85%		\$34.00	183.85%		\$40.80	183.85%		\$47.60	183.85%
		28	\$13.73	178.98%		\$20.60	179.02%		\$27.47	179.05%		\$34.33	179.01%		\$41.20	179.02%		\$48.07	179.02%
		29	\$13.87	174.57%		\$20.80	174.53%		\$27.73	174.51%		\$34.67	174.55%		\$41.60	174.53%		\$48.53	174.52%
		30	\$14.00	170.33%		\$21.00	170.33%		\$28.00	170.33%		\$35.00	170.33%		\$42.00	170.33%		\$49.00	170.33%

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**D. Office of Consumer Credit Commissioner**

3. Discussion of and Possible Vote to Take Action on the Readoption of 7 TAC, Chapter 83, Subchapter A, Concerning Rules for Regulated Lenders, Pursuant to the Completed Rule Review.

**PURPOSE:** Pursuant to Texas Government Code, §2001.039, the agency has completed the review of 7 TAC, Part 5, Chapter 83, Subchapter A. The notice of the review was published in the *Texas Register* as required on March 21, 2014 (39 TexReg 2147). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this subchapter continue to exist. As a result of internal review by the agency, the commission has determined that certain revisions are appropriate and necessary, which were previously proposed and published for comment. The commission is concurrently adopting amendments to 7 TAC, Chapter 83, Subchapter A, presented separately in these materials.

**RECOMMENDED ACTION:** The agency requests that the Finance Commission approve and adopt the rule review of Chapter 83, Subchapter A as the reasons for these rules continue to exist.

**RECOMMENDED MOTION:** I move that we find that the reasons for adopting Chapter 83, Subchapter A continue to exist and that the rules are repropose and readopted.

*Title 7. Banking and Securities*

*Part 5. Office of Consumer Credit Commissioner*

*Chapter 83. Regulated Lenders and Credit Access Businesses*

*Subchapter A. Rules for Regulated Lenders*

The Finance Commission of Texas (commission) has completed the review of Texas Administrative Code, Title 7, Part 5, Chapter 83, Subchapter A, concerning Rules for Regulated Lenders. Chapter 83, Subchapter A contains Division 1, concerning General Provisions (§§83.101 - 83.102); Division 2, concerning Authorized Activities (§§83.201 - 83.205); Division 3, concerning Application Procedures (§§83.301 - 83.311); Division 4, concerning License (§§83.401 - 83.408); Division 5, concerning Interest Charges on Loans (§§83.501 - 83.505); Division 6, concerning Alternate Charges for Consumer Loans (§§83.601 - 83.606); Division 7, concerning Interest and Other Charges on Secondary Mortgage Loans (§§83.701 - 83.708); Division 8, concerning Refunds for Precomputed Loans (§§83.751 - 83.758); Division 9, concerning Insurance (§§83.801 - 83.812); Division 10, concerning Duties and Authority of Authorized Lenders (§§83.826 - 83.838); and Division 11, concerning Prohibitions on Authorized Lenders (§§83.851 - 83.862). The rule review was conducted pursuant to Texas Government Code, §2001.039.

Notice of the review of 7 TAC, Chapter 83, Subchapter A was published in the *Texas Register* as required on March 21, 2014 (39 TexReg 2147). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this subchapter continue to exist.

As a result of internal review by the agency, the commission has determined that certain revisions are appropriate and necessary. Those amendments were published in the April 25, 2014, issue of the *Texas Register* (39 TexReg 3333). Upon receipt of no written comments on the amendments, the commission is concurrently adopting the amendments to 7 TAC, Chapter 83, Subchapter A, which are published elsewhere in this issue of the *Texas Register*.

Subject to the adopted amendments to Chapter 83, Subchapter A, the commission finds that the reasons for initially adopting these rules continue to exist, and readopts this subchapter in accordance with the requirements of Texas Government Code, §2001.039.

This concludes the review of 7 TAC, Part 5, Chapter 83, Subchapter A.